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2018 FEB 27 P 2:13

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CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA

BY: *C. Shaver*
DEPUTY CLERK

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA**

In Re: Various Matters

**GENERAL ORDER RE: FAMILY COURT
SERVICES APPOINTMENTS**

Pursuant to Family Code section 3160 et seq, the court shall make a mediator available to parties in matters involving custody and visitation issues. To better serve the needs of the public and the bench, effective March 1, 2018, this court shall begin scheduling mediation and custody counseling services in a three tiered model.

To implement this three tiered model, it is hereby ordered that the following rules shall supersede the current version of Local Rule 5.17. These rules shall be submitted for public comment to be adopted in to the court's local rules effective July 1, 2018.

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Family Court Services Appointments (Mediation, Information Gathering and Child Custody Recommended Counseling)

(a) Good faith effort to reach agreement

Except in those cases where domestic violence or other restraining orders have been issued or are pending hearing, or where there are allegations of child abuse or neglect currently under investigation, all parties shall make a good faith effort to arrive at an agreement regarding child custody and visitation before contacting Family Court Services to schedule appointments and before the court hearing.

(b) Types of Family Court Services Appointments

Confidential Mediation (Tier I below) shall be made available in all cases in which child custody counseling/visitation is at issue; the remaining services, including any additional Tier I appointments, shall be scheduled as directed by the family law judicial officer in the exercise of his/her discretion according to the needs of the case (Family Code section 3170).

(1) **Confidential Mediation (Tier I).** Tier I referrals provide confidential mediation for families who have been unable to reach an agreement regarding custody, parenting time, and/or visitation

(a) Although uncommon, nothing prohibits the court from ordering a referral of the parties to expedited or emergency child custody recommending counseling (Tier III) without first attending confidential mediation (Tier I).

(b) Children shall not participate in Tier I unless directed by the court, the Family Court Services Administrator, or the Family Court Services Mediator (Family Code section 3180).

(c) Tier I is confidential except that the mediator may report any suspected child abuse, elder abuse, if someone is a danger to themselves or others, and/or a parent reports he/she has committed or intends to commit a serious crime (Penal Code section 11166).

(2) **Information Gathering (Tier II).** Tier II referrals are for the purpose of gathering information. A judicial officer has the discretion to include any specific areas of inquiry in a Tier II referral including, but not limited to, contact with law enforcement, contact with Child Protective Services, and interviews with the child(ren) or other collateral contacts. A Tier II summary report shall be submitted to the court and will not include any recommendations from the Family Court Services professional. The confidentiality of Tier II sessions is limited because a report is provided to the court.

(3) **Child Custody Recommending Counseling (Tier III).** Tier III referrals are child custody recommending counseling sessions. If an agreement is reached, the child custody recommending counselor will document the agreement. Otherwise, the child custody recommending counselor will prepare a summary report and submit a recommendation to the court, the litigants and the litigants' attorney(s).

The confidentiality of Tier III sessions is limited because a report is provided to the court.

- (4) If parties are later referred to Tier II or Tier III, the Tier I mediator will not be assigned to conduct Tier II or Tier III in the absence of unusual circumstances as determined by the FCS Director or order of the court after a hearing before a judicial officer.

(c) Arranging for a Family Court Services Appointment

- (1) Upon the filing of the Request for Order or Domestic Violence Restraining Order involving a custody/visitation, the parties shall complete the Family Court Services online orientation program located on the court's website and shall arrange for an appointment with Family Court Services. Parties are to complete the online Family Court Services orientation class at www.cc-courts.org/onlineorientation (English) or www.cc-courts.org/orientacionenlinea (Spanish). Parties shall complete the orientation at least five (5) days prior to their Family Court Services appointment. The purpose of orientation is to provide the parties with information about the Court process, with knowledge of collaborative parenting plan development, child rearing in multiple homes, the impacts of domestic violence and children's developmental needs as related to post-separation parenting arrangements. If it is necessary for a party to complete orientation in a language other than English or Spanish, the party may call the Family Court Services office to make alternate arrangements. Sanctions and/or fees may be imposed for failure to complete the online orientation.
- (2) If parties have participated in a Family Court Services appointment within the previous six months, Family Court Services shall direct the parties to first attend their court hearing before an appointment will be scheduled, unless Family Court Services is otherwise ordered by a judge to immediately schedule an appointment. In their discretion, judges may direct Family Court Services to not schedule an appointment if parties have completed an appointment within twelve (12) months prior to a court hearing.
- (3) If a party is requesting a "move-away" order, the moving party is strongly encouraged to specifically state that request in the moving papers. A Mediator's or ChildCustody Recommending Counselor's ability to address a "move-away" request in custody counseling may be significantly limited unless a request for a "move-away" order is specifically stated in a party's moving papers.
- (4) If the custody or visitation hearing is scheduled before the Family Court Services appointment, and the case does not involve current domestic violence, criminal or other protective order, the parties may agree to request a continuance of the hearing by completing and filing a "Stipulation and Order re: Continuance of Court Hearing to a Date After the Family Court Services Appointment" (Local Form FamLaw-230). No fee is due with the filing of this form.

(d) Agreements

If the parties reach a complete agreement regarding custody and visitation before scheduling a Family Court Services appointment, they do not need to contact Family Court Services. If parties are self-represented, they may obtain assistance from the Family Law Facilitator to prepare a stipulation, so a court hearing can be avoided. Family Law Facilitator or "Help Desk" hours of services and locations are available on the court's website at www.cc-court.org. If the parties reach a complete agreement regarding custody and visitation after they have scheduled their appointment, both parties shall contact Family Court Services to cancel existing appointments at least 24 hours in advance. Sanctions and/or fees may be imposed on any party that fails to contact Family Court Services at least 24 hours before the scheduled appointment.

(e) Ex parte Communication in Family Court Services Appointments

All Family Court Services appointments shall be held in private, and all communications from the parties to the Mediator or Child Custody Recommending Counselor shall be deemed official information within the meaning of Evidence Code Section 1040. The Mediator/Child Custody Recommending Counselor may exclude attorneys from the Family Court Services appointment in the sole discretion of the Mediator/Child Custody Recommending Counselor.

(f) Ex parte communication with Family Court Services Mediators and Child Custody Recommending Counselors

All communication between Family Court Services Mediators and Child Custody Recommending Counselors and the parties/attorneys shall be by telephone conference or in writing, with copies sent to the other party/attorney, even where the Mediators and Child Custody Recommending Mediator/Child Counselor initiates the communication. If the communication is in writing, the party submitting the writing shall send it to the parties/attorneys simultaneously and by the same method (i.e., fax, mail or email). Email and faxes shall also be copied to all parties/attorneys. In urgent circumstances or when the Mediator/Child Custody Recommending Counselor is unable to set up a telephone conference with the parties/attorneys and there is insufficient time to correspond in writing with both parties/attorneys, the Mediator/Child Custody Recommending Counselor may initiate contact with one party/attorney for the purpose of clarifying information or obtaining additional information for a status report. The Mediator/Child Custody Recommending Counselor shall disclose such ex parte communication to the other party/attorney if this occurs. Questions regarding scheduling or other procedural matters may be discussed with the Family Court Services clerical staff.

(g) Family Court Services Complaint Process

At the earliest possible time, and no later than five (5) court days before the custody/visitation hearing, a party may file a written complaint, in the form of a declaration signed under penalty of perjury, specifying alleged misconduct of a Mediator/Child Custody Recommending Counselor. A copy of the declaration shall be served on the other party and a proof of service shall be filed. The party shall also

provide a copy of the declaration to the Manager of Family Court Services. The other party may file a written response. A copy of the response shall be served on the other party and a proof of service shall be filed before the next hearing date. The responding party shall also provide a copy of the written response to the Manager of Family Court Services. The Manager of Family Court Services shall investigate the complaint and respond in writing to the complainant and the responding party.

(h) Child Custody Recommending Counselors as Witnesses

In lieu of a subpoena and appropriate fee as described in California Government Code Section 68097.2, should a party wish to compel the appearance of a Family Court Services Child Custody Recommending Counselor as a witness at a custody/visitation trial, the party can notify Family Court Services in writing that the Custody Counselor's testimony is required. The notice shall state the date and time of the hearing, and the time when the Custody Counselor is expected to be called as a witness and shall be provided to Family Court Services at least five (5) court days before the hearing date. A non-refundable check in the appropriate amount as described in California Government Code Section 68097.2 shall accompany the written request for the Child Custody Recommending Counselor's appearance.

(i) Second Confidential Mediation (Tier I), Information Gathering (Tier II) or Child Custody Recommending Counseling (Tier III) Appointment on a Current Motion

- (1) Parties who are ordered to return to Family Court Services for a second Tier I, Tier II or Tier III Family Court Services appointment on a current motion may be charged a fee for such return services in the amount of \$250.
- (2) Where parties attend Family Court Services appointment, reach an agreement, subsequently rescind the agreement, and then wish to return or are ordered to return to, Family Court Services for an additional appointment, Family Court Services may charge a fee as set forth in subsection (1) above.

(j) Family Court Services Reports and Recommendations

- (1) When a Child Custody Recommending Counselor completes a Tier II Information Gathering Appointment, the Child Custody Recommending Counselor shall prepare a written report but will not include any recommendations. The report shall be submitted to the parties and to the Family Law department hearing the matter. The department shall file the report in a confidential portion of the Court file. Pursuant to the Standing Order of the Presiding Judge of this Court, use of this document shall be limited to the pending litigation and no person who has access to the document shall disseminate or disclose its contents to any person not entitled to access, nor shall the parties attach such document to any pleading in this or any other litigation or proceeding. Substantial sanctions shall be imposed upon any party who violates this order, whether intentionally, by mistake or by accident.
- (2) When the parties do not reach an agreement during a Tier III Child Custody Recommending Counseling Appointment, the Child Custody Recommending

Counselor shall prepare a written Status Report that includes the Child Custody Recommending Counselor's recommendations. The report shall be submitted to the parties and to the Family Law department hearing the matter. The department shall file the report in a confidential portion of the Court file. Pursuant to the Standing Order of the Presiding Judge of this Court, use of this document shall be limited to the pending litigation and no person who has access to the document shall disseminate or disclose its contents to any person not entitled to access, nor shall the parties attach such document to any pleading in this or any other litigation or proceeding. Substantial sanctions shall be imposed upon any party who violates this order, whether intentionally, by mistake or by accident.

- (3) Persons entitled to access the report and the information contained in the report are limited to the parties, their attorneys, federal or state law enforcement, judicial officers, necessary court employees, and minor's counsel, except upon order of the Court.

IT IS SO ORDERED.

Dated:

2/5/18


HON. TERRI MOCKLER
FAMILY LAW SUPERVISING JUDGE