

30.00 FAMILY LAW

RULE 30.1 MEDIATION

[Effective 7/1/20]

A. Purpose

The purpose of meeting with a child custody professional before attending a court hearing is to promote cooperation between the parents and 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 law including, but not limited to, Family Code sections 3011, 3020, and 3044. The purpose is also to reduce acrimony, conflict, trauma, and uncertainty for children to effect settlement of the issue of visitation rights of all parties that is in the best interest of the child. With these objectives in mind, the Placer County Superior Court endeavors to provide opportunities to resolve conflict and promote the best interest of the child(ren) prior to court hearings. These rules are intended to enhance the objectives of reducing conflict for families and children (Family Code section 3161).

B. Types of Mediation Sessions [Effective 7/1/20]

Family Court Services (FCS) provides the following services. Confidential mediation (Tier I below) shall be made available in all cases in which a request for a court hearing and order regarding child custody is filed by either party. Confidential mediation (Tier I below) may also be made available upon a request for mediation filed by agreement of both parties before a request for a court hearing is filed. Remaining services 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. [Effective 1/1/19; Amended 7/1/20]

If confidential mediation has not resulted in full agreement, the judicial officer has discretion to refer the parties to further services with FCS as provided after Tier I.

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 visitation before their mediation appointment. The mediator will not issue a recommendation to the court, but shall report the parties' agreement to the court.

a. Nothing prohibits the court from ordering a referral of the parties to expedited or emergency Mediation with Information Report (Tier II) without first attending confidential mediation (Tier I). [Effective 7/1/20]

b. Children shall not participate in Tier I unless directed by the court, FCS, or the child custody professional (Family Code section 3180).

c. Tier I is confidential except that the mediator may report any suspected child abuse, elder abuse, and/or if someone is a danger to themselves or others pursuant to Penal Code section 11166.

2. Information Gathering Mediation with Information Report (Tier II). Tier II referrals are for the purpose of gathering information in addition to mediation. 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 child custody professional. Tier II sessions are not confidential. [Effective 7/1/20]

a. The Tier II professional may interview the child. The professional shall inform a minor child over the age of five (5) or counsel for the child that the contents of the interview may not be confidential and may be presented to the court. [Effective 7/1/20]

C. Process

1. The party requesting or responding to a request for temporary orders involving child custody and visitation, or a party requesting mediation regarding child custody and visitation, will provide the court with a current mailing address, electronic address, and telephone number for each party and counsel of record. [Effective 1/1/19]

2. The Family Court Services Director will assign the case to a Tier I mediator. A notice of assignment of the Tier I mediator or mediation appointment will be mailed to all parties and counsel of record. [Effective 7/1/20]

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

3. Personal appearance for a Tier I, or II appointment is required unless there are unusual circumstances. Unusual circumstances include 1) one party resides more than 250 miles away from Placer County; 2) traveling to the appointment would cause an extreme hardship; 3) telephonic participation is ordered by the court; or 4) the professional finds good cause to allow a party to attend via telephone. The court, the FCS Director, or the assigned professional, all have the discretion to permit a request for a telephonic appearance at the appointment. [Amended and Renumbered 7/1/20]

4. In matters where domestic violence has been alleged or there is a protective order as defined in Family Code section 6218 in effect, parties shall have the right to separate appointments for Tier I, or Tier II appointments. [Amended and Renumbered 7/1/20]

5. The parties may agree to attend private mediation or CCRC with a private mediator or child custody recommending counselor attesting that his or her qualifications are in compliance with California Rules of Court, rules 5.210 and 5.230 by submitting a proposed stipulation and order to the court for review. [Renumbered 7/1/20]

6. All parties must attend complete orientation prior to an appointment with the assigned mediator unless attendance is excused by the court. Parties may attend in person or online if an online orientation is available through the Placer County Superior Court. [Amended and Renumbered 7/1/20]

7. The parties shall not attach any portion of the Tier II summary report or documents to any documents filed with the court, nor shall any such Tier II summary reports or documents be kept in the public file. The Tier II summary report may be attached as an order of the court after a properly noticed hearing. [Amended and Renumbered 7/1/20]

8. Access and disclosure of a Tier II summary report, in the absence of a court order stating otherwise, are limited to the parties, their attorneys of record, the child's attorney, other evaluators retained in the case, and other court-appointed mediators and evaluators addressing issues with the same family. The parties, their attorneys of record, and/or other evaluators shall not disclose or discuss the Tier II or evaluation summary reports with the minor child. [Amended and Renumbered 7/1/20]

9. The court retains jurisdiction to impose monetary sanctions for failure to comply with the court-ordered mediation process. [Renumbered 7/1/20]

D. Hearings After Confidential Mediation (Tier I)

If an agreement is not reached during confidential mediation (Tier I), the parties will be required to attend a hearing before a judicial officer. The judicial officer has the discretion to make temporary child custody, parenting time, or visitation orders, and/or refer the parties to Tier II. [Effective 7/1/20]

E. Hearings After Mediation with Information Report (Tier II) [Effective 7/1/20]

If the parties do not reach an agreement after Mediation with Information Report (Tier II), the parties will be required to attend a hearing before a judicial officer. The judicial officer has the discretion to make temporary child custody, parenting time, or visitation orders, and/or refer the parties to a partial or full child custody evaluation. [Effective 7/1/20]

F. Challenges and Complaints Regarding the Assigned Mediator (Tier I) [Amended and Renumbered 7/1/20]

1. Each party may challenge/object to the assignment of a particular mediator once by filing written challenges/objections with the Family Court Services Director. Written challenges/objections to an assigned mediator must be filed and served on the other party within seven (7) calendar days of the date of the notice of the assignment. Neither party may challenge/object to an assigned mediator after the (7) calendar days of the date of the notice of assignment. The FCS Director in his/her discretion may remove an assigned mediator. [Effective 7/1/20]
2. Any complaints against an assigned mediator shall be presented to the Family Court Services Director. [Effective 7/1/20]

G. Contacting the Assigned Mediator (Tier I) or the Assigned Mediator with Information Gathering (Tier II) [Amended and Renumbered 7/1/20]

1. There will be no ex parte communications with the assigned mediator by the parties and/or the attorneys of record. [Effective 7/1/20]
2. The parties and/or their attorneys may submit further information to the assigned Tier II Mediator not to exceed thirteen (13) pages in length if it is provided at least three (3) calendar days prior to the regularly scheduled appointment and includes a proof of service showing service on the opposing party and/or attorney. An attorney may submit an “attorney input letter” no longer than one (1) page in length, double-spaced to the assigned Tier II Mediator as part of the thirteen (13) pages. [Effective 7/1/20]
3. For emergency or expedited appointments, any documentation may be submitted on the day of the appointment if it includes a proof of service showing service on the opposing party and/or attorney at least one (1) calendar day prior to the appointment. The documents shall not exceed thirteen (13) pages in length. [Effective 7/1/20]

H. Availability of Tier II Mediator for Testimony [Amended and Renumbered 7/1/20]

A party may subpoena or take the deposition of a mediator that conducted a Tier II session after the issuance of their summary report. A party may not subpoena or take the deposition of a mediator that conducted Tier I in the absence of a court order. A subpoena for a Tier II Mediator must be served at least 10 calendar days in advance. If the Tier II Mediator is an employee of the Court, deposit in the amount specified in Government Code 68097.2 (b) is required with the subpoena. If the Tier II Mediator is a contracted mediator, the hourly rate for testimony will be set by the contracted mediator and a deposit for time expended preparing for the testimony will be required at the time the subpoena is served on the contracted mediator. [Effective 7/1/20]

A party seeking to take the deposition of a Tier II Mediator must provide them at least thirty (30) calendar days advance notice. If the Tier 2 Mediator is an employee of the court, depositions shall take place at the office of Family Court Services on a regular court day during regular business hours. [Effective 7/1/20]