

Dependency Mediation Program. (LR 12.19)

A. **Authority.** See W&I §350(a) and CRC 5.518.

B. Referrals to Mediation.

1. Mediations may be set at any stage and to discuss any issue related to a dependency proceeding. The court retains discretion to refer or not to refer a case to mediation.

Attendance at mediation is mandatory. At the time of a referral of a case to mediation, the court will order the parties to be present and will inform them that a failure to appear may result in orders against their interests being entered. The court will further advise all counsel and child welfare workers that their failure to appear on time, to be prepared, or to participate in the entire mediation session may result in the court issuing an Order to Show Cause. The mediator will be available to confer with counsel regarding the case and issues for mediation in advance of the mediation session.

2. Cases are generally referred for mediation at the time of a court appearance. However, if all parties and counsel agree that mediation would be useful, counsel may request that a mediation be set between court appearances. In such situations, or in the event of the need for a continuance of a previously scheduled mediation, counsel shall contact the Family Court Services Manager to discuss the proper procedures for setting or re-scheduling a mediation date.

C. Scheduling of Mediation Sessions.

1. Mediations are scheduled by the court on previously set court dates or by requesting that the matter be added to calendar for the purpose of scheduling mediation.
2. Although mediations are generally set for 9:00 a.m. or 1:30 p.m., they can be specially set at earlier or later times to meet the special needs of counsel or parties. However, mediations should *not* be set to begin any later than 9:30 a.m. or 2:00 p.m., respectively, except in exceptional circumstances and with advance approval of the mediator.

D. Participants Included in Mediation.

The Mediation Referral Order will indicate who is required and who is invited to attend the mediation session. No person other than those indicated on the Mediation Referral Order may attend the mediation unless there is agreement by *all* parties and counsel to that person's participation.

E. Attorney Responsibilities.

1. Attorneys must fully prepare themselves and their clients for their participation in the mediation *prior* to the session by:
 - a. Explaining the mediation process and the commitment of time expected of the mediation participants;

- b. Preparing their clients to participate in the mediation;
 - c. Familiarizing themselves with the legal and non-legal issues of the case;
 - d. Preparing to discuss the case issues with the mediator prior to the mediation;
2. Except in emergency situations, attorneys must be available for the entire mediation session unless otherwise specifically pre-arranged with the mediator.
3. All parties attending mediation must have the authority to fully negotiate and settle the disputed issues. Attorneys must ensure that their clients have such authority, and if not, must arrange for the person with authority to attend the mediation.
4. Minor's counsel must be prepared to discuss any specific service needs of the minor including, but not limited to, educational, emotional, social or medical needs.

F. Child Welfare Worker's Responsibilities.

1. The child welfare worker will prepare himself or herself for mediation *prior* to the session by:
 - a. Talking with his or her counsel and familiarizing himself or herself with the legal and non-legal issues of the case;
 - b. Telling his or her counsel if he or she is unable to freely negotiate and make binding agreements so that counsel can arrange for the person with authority to participate in the mediation;
 - c. Discussing the case issues with the mediator, if appropriate;
2. Clearing his or her calendar to be available for the entire mediation session unless otherwise specifically pre-arranged with the mediator.

G. Confidentiality of Mediation Sessions.

1. Everything said during the course of a mediation is confidential with the following exceptions:
 - a. Any information revealed to a mandated reporter that could form the basis of a new petition;
 - b. Any specific threats to injure one's self or another person.
2. Except as noted above, nothing said during the course of the mediation may be used in any social report submitted to the court, nor may such information be used in any way that otherwise breaches the confidentiality of the mediation session.
3. Information gathered by the mediator in advance of the mediation for the purposes of the mediation is treated with the same confidentiality as the information heard during the mediation.

H. Cases Involving Allegations of Domestic Violence.

1. If a case set for mediation involves allegations of domestic violence, the mediators must conduct an assessment and make a determination as to the manner in which to conduct the mediation so as to assure:
 - a. The physical safety of all parties; and
 - b. That the victim parent is not intimidated into settling the case;

2. See Appendix B for the complete Domestic Violence protocols related to dependency mediation.

I. Reporting the Results of the Mediation to the Court.

1. Except as specifically set forth in this section, the mediator must not make any report to the court about anything that occurs or is discussed during a mediation;
2. If the parties resolve all or some of the issues, the mediator will write up the parties' agreement. The written agreement will include the specific terms of the settlement, and all parties and the attorneys who participate in the agreement must review and approve it and indicate their agreement in writing by signing the agreement before it is submitted to the court. The mediator must give a copy of the written agreement to each mediation participant;
3. The parties will proceed directly to court following the mediation session to report to the court either the terms of their agreement, a request for an additional mediation session, or to request that the matter be set for hearing;
4. The mediator will present the court with the parties' written agreement. If the court accepts the parties' agreement, it will be made a court order and the written agreement will be placed in the court file.

J. Exit Order (Custody and Visitation Mediation)

1. All cases except those with agreed upon Custody and Visitation Orders approved by the court will be referred to mediation before the case is dismissed with exit (custody and visitation) orders when either of the following situations exists: 1) both parents have a significant relationship with the minor(s) and the parents are not living together; or 2) when the case is to be dismissed with one, or both, of the parents having custody of the minor(s), and the minor has a significant relationship with a former caretaker. These cases will be referred to exit order mediation at the court hearing at which the recommendation is dismissal and will be set on a date agreed to by the parties and the mediator staffing allows.
2. Counsel may call the Family Court Services Manager to schedule an exit order mediation in advance of a court hearing or to schedule a mediation on the same date as the review hearing at which dismissal is the recommendation, provided counsel contact the Family Court Services Manager five (5) days before the court hearing.
3. The court may refer cases directly from a court hearing for an immediate mediation, as mediator staffing allows.
4. Attorneys and child welfare workers must inform the mediator and all other parties if they are opposed to the dismissal of the case. If dismissal of the case is in dispute, all attorneys, parties and child welfare workers must attend the mediation unless specifically excused by the mediator.
5. In those cases in which there is an agreement about the dismissal of the case, the mediator will spend most of the mediation session working with the parents without attorneys or child welfare workers. This private meeting is intended to prepare parents for leaving the dependency system with a parenting plan that they have created together.

6. The child welfare worker and all attorneys may participate or be excused from participation in the exit order mediation as prearranged with the mediator assigned to the case.
7. Notwithstanding their lack of participation in person, any attorney or child welfare worker who does not attend the exit mediation in person must provide the mediator with a number at which he or she can be reached during the mediation session.
8. Parents' counsel must discuss custody and visitation issues with their clients prior to the exit order mediation.
9. If any attorney or child welfare worker willfully fails to attend the exit mediation, or cannot be reached at the phone number given the mediator, his or her failure to participate will be an implied consent to any agreement reached in his or her absence.
10. Minor's counsel must prepare the exit order forms, except for the custody and visitation issues, and the mailing envelopes in advance of the mediation session.
11. The parties will proceed directly to the court following the mediation session.

APPENDIX A

DEPENDENCY MEDIATION REFERRAL ORDER

Petition #(s): _____

Name of Case(s): _____

Case Status: _____

Name(s) of Child(ren) whose issues are to be addressed in mediation:

Interpreter Ordered? Yes No (Circle One) Language: _____

History of Domestic Violence Yes No (Circle One)

Current Restraining Order Yes No (Circle One)

Will **all** parties and counsel be attending? Yes No (Circle One)

 If not, who will **NOT** be attending? _____

Have any non-parties been invited to participate?

 If so, indicate names here _____

Issues to be mediated:

MEDIATION SCHEDULED FOR:

Date: _____ Time: _____ Mediator Assigned: _____

Ordered on: _____ From Department: _____

COURTROOM CLERK: GIVE THIS FORM AND COURT FILE TO ASSIGNED MEDIATOR.

APPENDIX B

DEPENDENCY MEDIATION PROGRAM SAN FRANCISCO UNIFIED FAMILY COURT

DOMESTIC VIOLENCE PROTOCOLS FOR DEPENDENCY MEDIATION REFERRALS

A. Court Referrals to Mediation in Cases Involving Domestic Violence

1. Issues to be considered in making referrals:
 - a. Extent of physical violence in the case;
 - b. How recent was the last known incident?
 - c. Can the mediation provide adequate protection for the alleged victim?
 - d. The alleged victim's willingness to participate in mediation.

2. Noting Domestic Violence on Referral Order:

The judicial officer will make a note on the Mediation Referral Order if there are any current or past domestic violence issues, including a notation regarding any current restraining orders.

3. Attendance of Support Person at Mediation:
 - a. The referring judicial officer will advise the alleged victim that he or she may bring a support person to the mediation;
 - b. The referring judicial officer will explain that a support person's role is limited to support only and that person may not actively participate in the mediation without the consent of all other parties;
 - c. The referring judicial officer will advise the parties that the mediator will meet with the alleged victim and perpetrator separately.

B. Dependency Mediation Program Domestic Violence Protocols

1. Case Development
 - a. Case development will include a thorough review of the court file specifically targeting any information relating to any domestic violence issues;
 - b. The mediator will talk with all attorneys and the child welfare worker in advance of the mediation about the extent and current status of any violence between the parties including whether or not there are restraining orders currently in effect;
 - c. During case development the mediator will tell the alleged victim's attorney of his or her client's right to bring a support person to the mediation;
 - d. Based on the information gathered in the domestic violence assessment, the mediator will set up meeting times with the parents that preclude them from seeing each other at all, as is appropriate to the specific case.

2. Mediation Process

The mediation process will be conducted in such a way as to protect the physical and emotional safety of all participants as well as to promote an equal balance of power, as follows:

- a. Victim parents may, at their option, bring a support person to the mediation, with the understanding that the support person is there to provide support only and is NOT an active participant in the process (unless otherwise agreed to by all participants);
- b. The mediator will initially meet separately with each parent in order to set up a safety plan. The plan will be used to determine:
 - 1) whether or not the alleged victim would be better protected by continuing to meet separately with the mediator or by meeting with the alleged perpetrator during the course of mediation;
 - 2) how the alleged victim can protect her or himself outside the courthouse;
 - 3) whether the alleged victim is interested in having a joint meeting that includes the perpetrator. In making that determination, the mediator will advise the alleged victim that she or he has an absolute right to decline a joint meeting with the alleged perpetrator.
- c. Each parent's meeting with the mediator will be set up to prevent the parents from seeing each other if appropriate;
- d. The mediator will assist the alleged victim in creating a safety plan for appearing (or not appearing) in court and for leaving the courthouse in a manner that best protects her or his safety;
- e. The mediator will work with the parties to assist them in creating a settlement that promotes the physical and emotional safety of the involved parties and their children.