

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF NEVADA

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CHILD CUSTODY RECOMMENDING COUNSELING POLICY

BEST INTEREST OF THE CHILD (Family Code Section 3011)

Best interest of the child (health, safety and welfare) is always the prime consideration of the Court.

LEGISLATIVE FINDINGS AND DECLARATIONS; CONTINUING CONTACT WITH PARENTS (Family Code Section 3020)

The Legislature finds and declares that it is the public policy of this state to assure minor children frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy, except where the contact would not be in the best interest of the child, as provided in Section 3011.

FAMILY CODE SECTION 3040 (A) (1)

In making an order granting custody to either parent, the Court shall consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with the non-custodial parent.

PURPOSE OF CHILD CUSTODY RECOMMENDING COUNSELING PROCEEDINGS (Family Code Section 3161)

The purposes of Child Custody Recommending Counseling proceedings are as follows:

- (a) To reduce acrimony that may exist between the parties.
- (b) 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 the health and safety of the child.
- (c) To effect a settlement of the issue of visitation rights of all parties that is in the best interest of the child.

UNIFORM STANDARDS OF PRACTICE; CONTENTS; ADOPTION BY JUDICIAL COUNCIL (Family Code Section 3162)

- (a) Child Custody Recommending Counseling of cases involving custody and visitation concerning children shall be governed by uniform standards of practice adopted by the Judicial Council.
- (b) The standards of practice shall include, but not be limited to, all of the following:
 - (1) Provision for the best interest of the child and the safeguarding of the rights of the child to frequent and continuing contact with both parents.
 - (2) Facilitation of the transition of the family by detailing factors to be considered in decisions concerning the child's future.
 - (3) The conducting of negotiations in such a way as to equalize power relationships between the parties.

PRE-CHILD CUSTODY RECOMMENDING COUNSELING ORIENTATION

Nevada City Branch: Pre-Child Custody Recommending Counseling Orientation will take place every Tuesday at 1:00 p.m. Please check in at the Child Custody Recommending Counseling window upon your arrival.

Truckee Branch: Call for an appointment (530) 582-7835

DOMESTIC VIOLENCE (Family Code Section 3181)

- (a) In a proceeding in which Child Custody Recommending Counseling is required pursuant to this chapter, where there has been a history of domestic violence between the parties or where a protective order as defined in Section 6218 is in effect, at the request of the party alleging domestic violence in a written declaration under penalty of perjury or protected by the order, the Child Custody Recommending Counselor appointed pursuant to this chapter shall meet with the parties separately and at separate times.
- (b) California Rule of Court 5.230 establishes a protocol for cases involving domestic violence. A subsection of the Rule states, "In domestic violence cases in which neither party has requested separate sessions at separate times, Family Court Services staff must confer with the parties separately and privately to determine whether joint or separate sessions are appropriate."

A person, who falls within the provisions of Family Code Section 3181, is entitled to have a support person with them during Child Custody Recommending Counseling and orientation. The support person is not present as a legal advisor. The support person is present to assist the [alleged] victim of domestic violence in feeling more confident that he or she will not be emotionally injured or threatened by the other party.

DOMESTIC VIOLENCE (CONT.) (Family Code Section 3181)

The presence of a support person does not waive the confidentiality of the Child Custody Recommending Counseling process and is bound by the confidentiality of the Child Custody Recommending Counseling proceeding. The support person may be in the session even if the other party is not present.

A Child Custody Recommending Counselor may exclude a support person from a session pursuant to Family Code Section 3182 if:

- 1) The support person attempts to participate in the session
- 2) The support person acts as an advocate for the [alleged] victim in a session
- 3) The presence or actions of the support person disrupts the Child Custody Recommending Counseling process.

(Family Code Section 3044) Presumption that Custody of Child to Parent Who Perpetrated Domestic Violence Against Other Party is Not in the Best Interest of the Child.

- (a) Upon a finding by the court that a party seeking custody of a child has perpetrated domestic violence against the other party seeking custody of the child or against the child or the child's siblings within the previous five years, there is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child, pursuant to Section 3011. This presumption may only be rebutted by a preponderance of the evidence.
- (b) In determining whether the presumption set forth in subdivision (a) has been overcome, the court shall consider all of the following factors.
 - (1) Whether the perpetrator of domestic violence has demonstrated that giving sole or joint physical or legal custody of a child to the perpetrator is in the best interest of the child. In determining the best interest of the child, the preference for frequent and continuing contact with both parents, as set forth in subdivision (b) of Section 3020, or with the non-custodial parent, as set forth in paragraph (1) of subdivision (a) of Section 3040 may not be used to rebut the presumption, in whole or in part.
 - (2) Whether the perpetrator has successfully completed a batterer's treatment program that meets the criteria outlined in subdivision (c) of Section 1203.097 of the Penal Code.
 - (3) Whether the perpetrator has successfully completed a program of alcohol or drug abuse counseling if the court determines the counseling is appropriate.
 - (4) Whether the perpetrator has successfully completed a parenting class if the court determines the class to be appropriate.

DOMESTIC VIOLENCE (CONT.) (Family Code Section 3181)

- (5) Whether the perpetrator is on probation or parole, and whether he or she has complied with the terms and conditions of probation or parole.
 - (6) Whether the perpetrator is restrained by a protective order or restraining order, and whether he or she has complied with its terms and conditions.
 - (7) Whether the perpetrator of domestic violence has committed any further acts of domestic violence.
- (c) For purposes of this section, a person has “perpetrated domestic violence” when he or she is found by the court to have intentionally or recklessly caused or attempted to cause bodily injury, or sexual assault, or to have placed a person in reasonable apprehension of imminent serious bodily injury to that person or to another, or to have engaged in any behavior involving, but not limited to, threatening, striking, harassing, destroying personal property or disturbing the peace of another, for which a court may issue an ex parte order pursuant to Section 6320 to protect the other party seeking custody of the child or to protect the child and the child’s siblings.
- (d) For purposes of this section, the requirement of a finding by the court shall be satisfied by, among other things, and not limited to, evidence that a party seeking custody has been convicted within the previous five years, after a trial or a plea of guilty or no contest, of any crime against the other party that comes within the definition of domestic violence contained in Section 6211 and of abuse contained in Section 6203, including, but not limited to, a crime described in subdivision (e) of Section 243, or Section 262, 262, 273.5, 422 or 646.9 of the Penal Code. The requirement of a finding by the court shall also be satisfied if any court, whether that court hears or has heard the child custody proceeding or not, has made a finding pursuant to subdivision (a) based on conduct occurring within the previous five years.
- (e) When a court makes a finding that a party has perpetrated domestic violence, the court may not base its findings solely on conclusions reached by a child custody evaluator or relevant, admissible evidence submitted by the parties.
- (f) In any custody or restraining order proceeding in which a party has alleged that the other party has perpetrated domestic violence in accordance with the terms of this section, the court shall inform the parties of the existence of this section and shall give them a copy of this section prior to any custody Child Custody Recommending Counseling in the case. {Added 1999 ch. 445; Amended 2003 ch. 243.}

FAMILY CODE SECTION 3180 – Duties of Child Custody Recommending Counselors

- (a) In a Child Custody Recommending Counseling proceedings pursuant to this chapter, the Child Custody Recommending Counselor has the duty to assess the needs and interests of the child involved in the controversy, and is entitled to interview the child where the Child Custody Recommending Counselor considers the interview appropriate or necessary.
- (b) The Child Custody Recommending Counselor shall use his or her best efforts to effect a settlement of the custody or visitation dispute that is in the best interest of the child, as provided in Section 3011.

MINORS IN CHILD CUSTODY RECOMMENDING COUNSELING.

Please do not bring children to your Child Custody Recommending Counseling appointment. Children only attend Child Custody Recommending Counseling by Court Order or at the request of the Child Custody Recommending Counselor. Please be reminded that infants do not sleep during Child Custody Recommending Counseling and can create a distraction.

The Courthouse does not provide childcare or supervision for children during your Child Custody Recommending Counseling appointment and it is not acceptable to leave children unattended in the hallway. It is important for parents to provide childcare during the Child Custody Recommending Counseling appointment that allows you to be attentive and to participate in your Child Custody Recommending Counseling appointment.

PREFERENCE OF CHILD (Family Code Section 3042)

If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to the custody, the Court shall consider and give due weight to the wishes of the child in making an order granting or modifying custody.

OTHER PARTIES IN CHILD CUSTODY RECOMMENDING COUNSELING

Other parties who are significant to the minors may be included in court ordered Child Custody Recommending Counseling at the discretion of the Child Custody Recommending Counselor. These parties may include, but are not limited to, grandparents, stepparents, adult siblings, teachers, therapists, evaluators, or other significant person in the child's life. Child Custody Recommending Counseling sessions always begin with the petitioner and respondent, unless otherwise directed by the Court.

ATTORNEYS IN CHILD CUSTODY RECOMMENDING COUNSELING

Attorneys may participate in the Child Custody Recommending Counseling session if both parents agree. Please review your case thoroughly with your attorney prior to the start of Child Custody Recommending Counseling and then come to Child Custody Recommending Counseling prepared to sign an agreement. Do not agree to anything that, in your opinion, is not in the best interest of your children. Your attorney will have an opportunity to review your agreement prior to the Judge making it an order of the court.

ATTORNEYS IN CHILD CUSTODY RECOMMENDING COUNSELING (CONT.)

You cannot hold up the Child Custody Recommending Counseling session while your attorney reviews your agreement expecting the Child Custody Recommending Counselor and the other parent to wait. Attorneys are advised not to instruct their clients not to sign an agreement until they have reviewed it. Their review takes place prior to the Judge signing the agreement.

At the request of counsel, an "Attorney Conference" may be held prior to or at the conclusion of Child Custody Recommending Counseling to review the recommendation. If only one side has an attorney, the self-represented person is included in the conference. An attorney may mediate for their client if the client is physically unable to attend. This requires the consent of the other parent, who is entitled to have his or her own attorney present.

MISSED CHILD CUSTODY RECOMMENDING COUNSELING APPOINTMENT

Failure to appear or cancel your appointment within 48 hours may result in sanctions (a fine) of up to \$100.00.

CHILD CUSTODY RECOMMENDING COUNSELORS ARE ASSIGNED BY AVAILABILITY, NOT PREFERENCE.

You will not be assigned to a particular Child Custody Recommending Counselor, but to a Child Custody Recommending Counseling process. In mandatory Child Custody Recommending Counseling cases, the Child Custody Recommending Counselor may choose to stay with a case until certain issues are resolved. The case would then return to availability status.

Child Custody Recommending Counseling appointments are generally set for one hour. However, cases coming directly out of Court may delay the start of your session. For the purpose of scheduling, the parties should plan on more than one hour and make schedule arrangements for employment, childcare schedules, etc. accordingly.

TELEPHONE CHILD CUSTODY RECOMMENDING COUNSELING

In some Court-ordered cases, Child Custody Recommending Counseling's may be conducted with one party in the office and the other party on the telephone. This may be done when, because of geographical distance, one party claims hardship and cannot reasonably appear.

CHILD CUSTODY RECOMMENDING COUNSELING AGREEMENTS

When parties reach a mediated agreement in cases referred directly out of Court the parties and/or their attorneys will be given a copy of the agreement prior to submitting the agreement to the Family Court Judge. When the Judge signs the mediated agreement it is file stamped by the Clerk and each party and their attorney is provided a copy of the mediated agreement/court order.

In mandatory Child Custody Recommending Counseling cases that are not returning to Court the same day, attorneys will be faxed a copy of the agreement prior to the Judge signing the agreement, if requested.

ENFORCEMENT

The Child Custody Recommending Counselor is not responsible for the enforcement of mediated agreements. Agreements become Court Orders. Child Custody Recommending Counselors do not give legal advice. Contact an attorney or the court clerk on enforcement procedure.

MANDATORY CHILD CUSTODY RECOMMENDING COUNSELING

Cases referred directly out of Court or Court-ordered are called mandatory Child Custody Recommending Counseling. If an agreement is not reached in mandatory Child Custody Recommending Counseling the Court expects the Child Custody Recommending Counselor to make a recommendation.

RECOMMENDATIONS (Family Code Section 3183)

Nevada County is a Recommending County. When the parties are unable to reach an agreement in mandatory Child Custody Recommending Counseling the Child Custody Recommending Counselor shall prepare a written recommendation under the heading Status Report. The Status Report will be placed in a confidential section of the Court file for review by the bench. Copies of the Status Report will be available to the parties and attorneys. The Judge may or may not act on the recommendation in the Status Report. Only the decisions made by the Judge become part of the Court Order.

Child Custody Recommending Counseling and child custody evaluation are distinct practices. Experts in Child Custody Recommending Counseling work to assist the parties in reaching mutually agreed-on resolutions. By contrast, the process of child custody evaluation establishes a third party as the expert who will investigate, assess, evaluate, report, and make recommendations. Child Custody Recommending Counseling is distinct from evaluation in two ways. First, the primary objective of Child Custody Recommending Counseling is to facilitate the parties' own decision-making. Second, the scope of the recommending aspect of Child Custody Recommending Counseling is more limited and less extensive than most full or partial child custody evaluations.

The primary purpose of Child Custody Recommending Counseling is to help the parties resolve their issues. The emphasis is on ***Child Custody Recommending Counseling with recommendations***. During Child Custody Recommending Counseling, the Child Custody Recommending Counselor will 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. The Child Custody Recommending Counselor's contribution to the process will correspond to the parties' needs, requests, circumstances, and stage of Child Custody Recommending Counseling.

EVALUATION REFERRALS

In order for parents and the court to gain clarity on the needs and best interest of the children, parents can agree to, Child Custody Recommending Counselors can recommend or the court can order one or more of the following:

- Partial Child Custody Evaluation
- Full Child Custody Evaluation (includes psychological testing)
- Substance Abuse Assessment
- Anger Management Assessment
- Mental Health Status Check

CHILD CUSTODY RECOMMENDING COUNSELING FILES

Child Custody Recommending Counseling files are private and confidential. Child Custody Recommending Counseling files are kept for two years from your last Child Custody Recommending Counseling.

DISQUALIFICATION OF A CHILD CUSTODY RECOMMENDING COUNSELOR

The Child Custody Recommending Counselor may be disqualified by virtue of a pre-existing personal relationship or a pre-existing professional relationship outside of Family Court. Previous contact through Child Custody Recommending Counseling is not grounds for disqualification. In any case, either the parties or the Child Custody Recommending Counselor should air the potential for bias or the appearance of bias, at the start of the Child Custody Recommending Counseling session. If the Child Custody Recommending Counselor identifies a conflict of interest, he or she will recuse himself or herself from the case.

COMPLAINT PROCEDURES (California Rule of Court 5.210)

Clients and/or counsel desiring to register a complaint regarding the Child Custody Recommending Counseling process or an individual Child Custody Recommending Counselor may request a copy of the official complaint form, which may be obtained from Family Court Services or the Court's website, www.nevadacountycourts.com. Complaints are allowed regarding the process, the facilities, or the behavior of the Child Custody Recommending Counselor. Complaints cannot be related to the substance or merits of the case. Those issues are reserved for the Judge. Subsequent to filing the complaint form, parties may request a Meet and Confer Session.

COMPLAINT PROCEDURES (California Rule of Court 5.210) Cont.

We appreciate you taking time to inform us of your complaint regarding the services you received through Family Court Services. We are committed to responding to your concerns in a prompt and thorough manner.

LIMITATIONS ON CONFIDENTIALITY

Please be advised that there are certain limitations on confidentiality regarding the Child Custody Recommending Counseling process. Family Code Section 3177 provides that Child Custody Recommending Counseling “shall be held in private and shall be confidential.” This provision of the law can be modified by Local Rules of Court to allow the Family Court Child Custody Recommending Counselor to make recommendations to the Court pursuant to Family Code Section 3183. This section provides that, “the Child Custody Recommending Counselor may, consistent with local Court rules, submit a recommendation to the Court as to the custody of, or visitation with the child.”

Nevada County Superior Court Rule 5.05(F)(4) states, “In the absence of an agreement, the Child Custody Recommending Counselor shall make a written recommendation at the request of the parties or the Court, and may make a written recommendation without such a request provided, however, if no proceedings are pending, no recommendation will be made.” If appropriate, the Child Custody Recommending Counselor’s recommendation may include a recommendation for a custody investigation.

Also, be advised that all of the Nevada County Court Child Custody Recommending Counselors are licensed mental health professionals and, as such, are mandated reporters of alleged child abuse. Alleged child abuse reports are made to Child Protective Services. There is also a duty to warn if a threat is made (during Child Custody Recommending Counseling) against a specific person. The duty to warn includes contacting the person against whom a threat has been made and the appropriate law enforcement agency.

DRUG TESTING (Family Code Section 3041.5)

Family Code Section 3041.5 states, in essence, that the Court may order drug testing in a custody/visitation case if there is an allegation that one or both parents put the child (ren) at a health or safety risk due to “...habitual, frequent, or continuous illegal use of controlled substances or the habitual or continuous use of alcohol...”

COMMUNICATION WITH THE CHILD CUSTODY RECOMMENDING COUNSELOR

Within the California Rules of Court, there is a prohibition against ex parte communication. Specifically, “A party or an attorney for a party shall not initiate contact with a court-appointed Child Custody Recommending Counselor, orally or in writing, to discuss the merits of a case without notice to the other party. The Child Custody Recommending Counselor may determine the nature and extent of the contact he or she will make with any party.”

With the above in mind, please do not write or contact us by phone. This includes your family and other support systems. Your letters will be returned by mail or at your next appointment. We will respond to specific questions regarding your parenting plan. Please include self-addressed stamped envelopes for you and the other parent. The other parent will receive a copy of your question and our response.

COMMUNICATION WITH THE CHILD CUSTODY RECOMMENDING COUNSELOR (CONT.)

Also, please be advised that it is the policy of Family Court Services (FCS) that Child Custody Recommending Counselors not accept Child Custody Recommending Counseling clients or their children into their private practice. All of the Child Custody Recommending Counselors are licensed mental health professionals. Most of the Child Custody Recommending Counselors also have a private therapy practice. Please do not ask the Child Custody Recommending Counselor to become your private therapist. There are ethical considerations involved as well as the potential appearance to the public that Child Custody Recommending Counselors are filling their private practice from a position of being paid as Child Custody Recommending Counselors from public funds.

CODE OF ETHICS

All Child Custody Recommending Counselors shall abide by the “Code of Ethics” California Courts.

CONTINUING EDUCATION REQUIREMENTS

All Family Court Services (FCS) Child Custody Recommending Counselors shall meet all statewide continuing education requirements for Child Custody Recommending Counselors and child custody evaluators. All FCS Child Custody Recommending Counselors are licensed mental health professionals and shall meet all continuing education required by their licensing board.