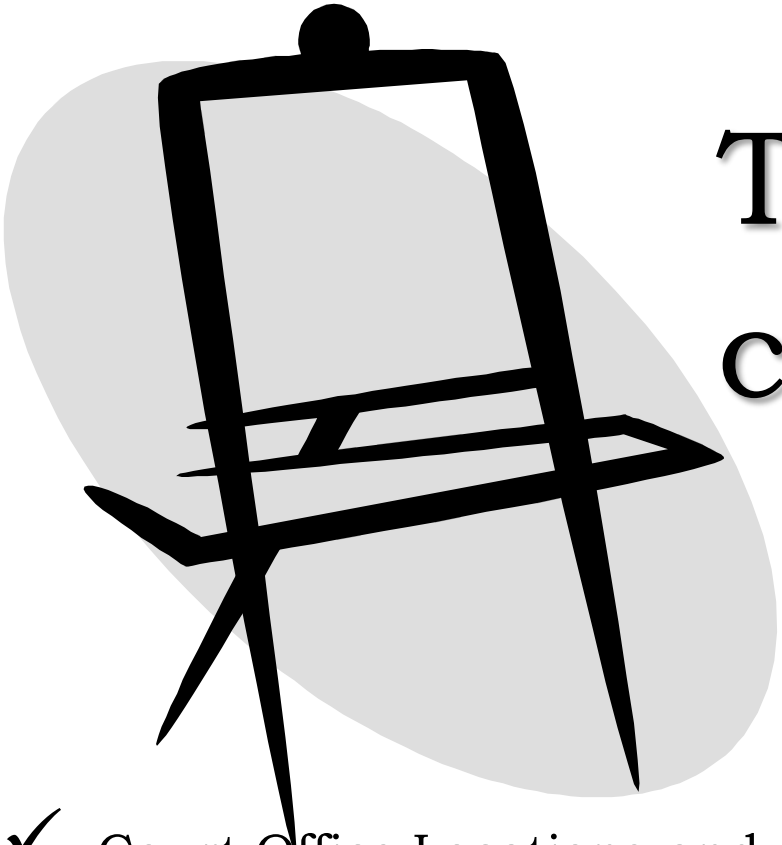


# Orientation To Family Court Services

# Parent Handbook


## Family Court Services

400 County Center, 6th Floor
Redwood City, CA 94063
Tel: (650) 261-5080
Fax: (650) 261-5142



# Table of contents


- ✓ Court Office Locations and Information for Family Law 2-4
- ✓ Resources 5-10
- ✓ 3 Points to Remember 11
- ✓ Family Court Services 12-20
- ✓ Helping Your Children 21-22
- ✓ Domestic Violence 24-29
- ✓ Helpful Tips for Parents 30-36
- ✓ Co-Parenting 37-41
- ✓ Books for Parents and Children 42-43

# Court Office Locations and Information for Family Law

| San Mateo Superior Court<br><br>Southern Branch<br>400 County Center<br>Redwood City, CA 94062 | **Parking Information**<br>• Metered parking is available on the ground floor of the County parking garage, located on the corner of Middlefield Road and Veteran's Boulevard<br>• The cost for metered parking is 25 cents for each half hour of parking<br>• A change machine is located near the elevators in the parking garage |
|---|---|

| FLOOR | OFFICE | HOURS |
|---|---|---|
| **Basement** | **Cafeteria** | **7:00 am – 3:30 pm** |
| **1st Floor Room A** | **Records Department**<br>View your Family Law file; coin-operated copier for public use<br>(Note: Family Court Services files are confidential)<br>Telephone: (650) 261-5100. | **Monday-Thursday:**<br>**8:30 am – 2:00 pm**<br>**Friday:**<br>**8:00 am - 2:00 pm** |
| | **Family Law Clerk's Office**<br>File documents (divorce, child support, restraining orders), set court dates, etc.<br>Telephone: (650) 261-5100 - Family Law Clerk's Office | **Monday-Thursday:**<br>**8:30 am – 2:00 pm**<br>**Friday:**<br>**8:00 am - 2:00 pm** |
| **2nd Floor** | **Family Law Facilitator's Office**<br><br>**Self Help Center**<br>Free use of computers and free information on a variety of legal topics<br><br>**Children's Waiting Room**<br>Telephone: (650) 298-5775 | (See pages 7 & 8 for hours and information)<br><br>**8:30 am - noon**<br>**1:00 pm - 5:00 pm** |
| **4th Floor** | **Courtroom 4C - Family Law Domestic Violence Calendar**<br>(Please check daily calendar to confirm courtroom) | |
| **6th Floor** | **Family Court Services – Mediation/Child Custody Recommending Counseling**<br>Telephone: (650) 261-5080 Fax: (650) 261-5142<br><br>**Family Law Courtroom 6A**<br>(Please check daily calendar to confirm courtroom) | **Office hours:**<br>**8:30 am – 2:00 pm or by appointment**<br>**Telephone hours:**<br>**10:00 am - 3:00 pm**<br>**(closed noon - 1 pm)** |
| **7th Floor** | **Family Law Courtrooms 7C and 7D**<br>(Please check daily calendar to confirm courtroom)<br><br>**Family Law ADR Program**<br>Mediation for financial issues, property issues, child support, spousal support. | (See page 9 for hours and information) |

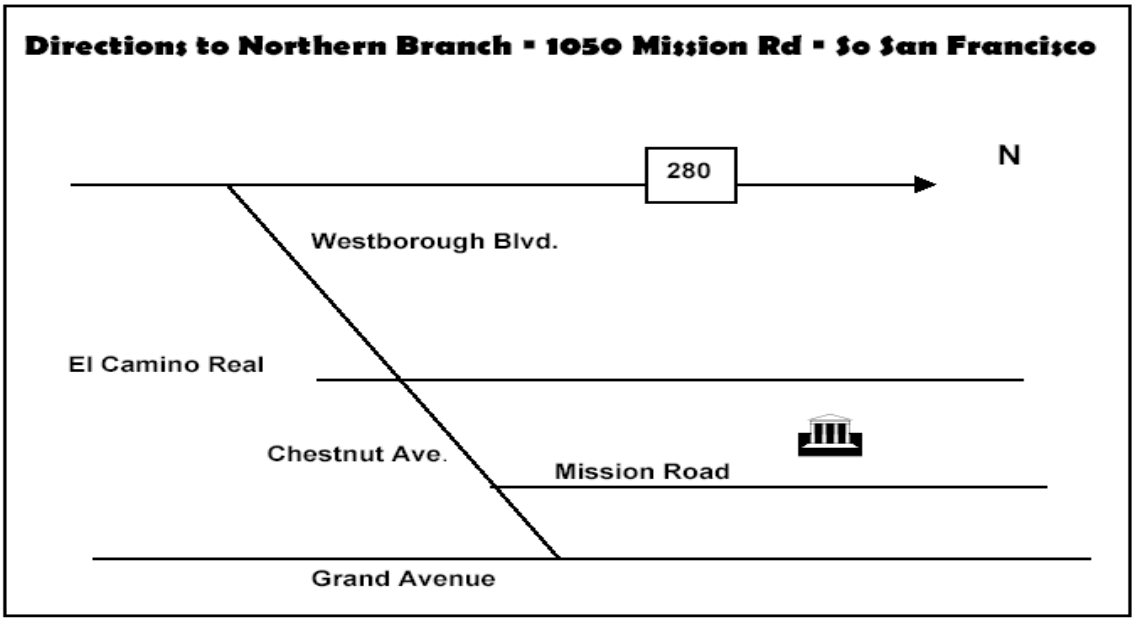
# Court Office Locations and Information for Family Law (continued)

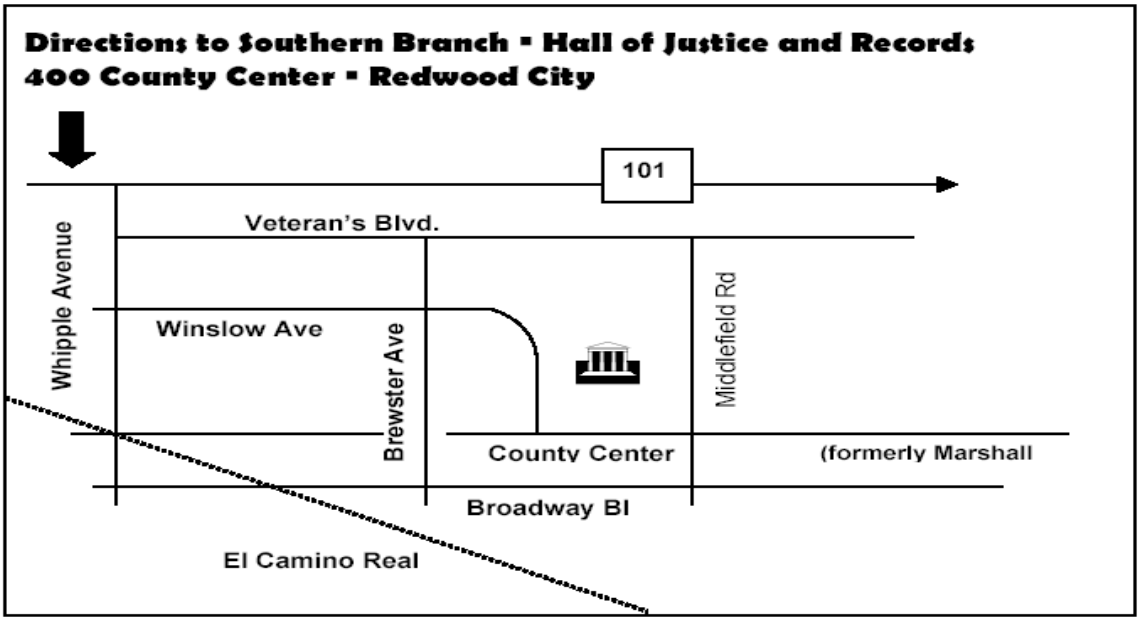
| | |
|---|---|
| **Department of Child Support Services**<br>**555 County Center, 2nd Floor**<br>**Redwood City, CA 94062** | **Information about child support, paternity testing**<br>Telephone: 1-866-901-3212<br>See above for parking information |

| | |
|---|---|
| **San Mateo Superior Court**<br><br>**Northern Branch**<br>**1050 Mission Road**<br>**So. San Francisco, CA 94080** | **No Fee Parking:**<br>Parking is available in the lot next to the Courthouse |

| OFFICES | HOURS |
|---|---|
| **Family Law Facilitator's Office**<br><br>**Self-Help Center**<br>Free use of computers and free information on a variety of legal topics | (See pages 7 & 8 for hours and information) |

# Directions to San Mateo Superior Court - Northern and Southern Divisions



# Resources

## Family Court Services

400 County Center, 6th Floor — (650) 261-5080
Redwood City, CA 94063 — FAX (650) 261-5142
*Mediation/Child Custody Recommending Counseling*

## Family Law Facilitator

(See pages 7 and 8)
400 County Center, 2nd Floor — (650) 261-5010
Redwood City, CA 94063 — Information Line

## Self-Help Center

400 County Center, 2nd Floor, Family Law Facilitator's Office — Southern Branch Location
Redwood City, CA 94063

1050 Mission Road, Family Law Facilitator's Office — Northern Branch Location
South San Francisco, CA 94080
*Free use of computers and free information on a variety of legal topics*

## Family Law ADR Program

(See page 9)

## Department of Child Support Services

555 County Center, 4th Floor — (866) 901-3212
Redwood City, CA 94063
*Information about child support, paternity testing*

## Bay Area Legal Aid

1048 El Camino Real, Suite A — (650) 358-0745
Redwood City, CA 94063 — (800) 551-5534
*Assistance with restraining orders* — (650) 472-2666

## CORA (Community Overcoming Relationship Abuse)

*24-hour support line, shelter, and legal assistance* — (800) 300-1080

## Legal Aid Society of San Mateo County

330 Twin Dolphin Drive, Suite 123 — (650) 558-0915
Redwood City, CA 94065 — (800) 381-8898
*Legal assistance and representation to income eligible clients with domestic violence or family law matters*

## Divorce/Parent Education Programs

(See page 11)

## Kids' Turn

(415) 437-0700
*Co-parent Educational Program, with classes offered in San Mateo County and neighboring counties, and online (The Kids' Turn Way – http://kidsturn.org/kt/online-program/)*

## Rally Family Visitation Services

(888) 277-7747
*Supervised visitation, supervised exchanges, therapeutic visitation*

# Websites

**www.courtinfo.org**
California Courts Online Self-Help Center

**www.icandocs.org/ca**
I-CAN! Forms assistance program

**www.sanmateocourt.org**
San Mateo Superior Court website

**www.familieschange.ca.gov**
Guide to separation and divorce



# Office of the Family Law Facilitator

For Assistance With: Child Support, Spousal Support, Paternity, Dissolution, Custody, Visitation, and Health Insurance Needs – (650) 261-5010 for recorded information

## Child and Spousal Support

Both parents are obligated to support their minor children, regardless of whether the parents were ever married. There is a statewide uniform guideline for child support, and the amount of child support is based on the income of the parties, the amount of time each parent spends with the children, and certain allowable hardship deductions. Either parent can receive child support.

If you are representing yourself, you can have your papers reviewed by the Family Law Facilitator. You can obtain blank forms from the Court Clerk's office, or on the court's website: **www.sanmateocourt.org.**

The Family Law Facilitator is available to help parents and all other parties with the following:

- General Family Law Information
- Dissolution (divorce) or legal separation
- Domestic Violence restraining orders
- Guidance in completing court forms
- Initiating an action to establish paternity
- Referrals to community resources
- Establishing or modifying child and spousal support, visitation, or child custody
- Health insurance issues

If you and the other parent have reached an agreement regarding any of the above matters, or would like to work towards agreeing on the amount of child support to be paid, the Family Law Facilitator (650) 261-5010 can help with an agreement or stipulation.

The Family Law Facilitator is not your lawyer. There is no attorney-client relationship between you and the Family Law Facilitator. Communications between you and the Family Law Facilitator are not confidential. The Family Law Facilitator is not responsible for the outcome of your case.

## Seek Legal Advice

The Family Law Facilitator can't assist individuals with complex cases or with multiple contested issues. You should consult with an attorney if you want personalized advice or strategy, to have a confidential conversation, or to be represented in court. For a small fee, you can have a short consultation with a private attorney by calling:

**Lawyer Referral Service - (650) 369-4149**

For a 90-minute low-cost mediation of family law disputes with an experienced family law attorney-mediator call:

**Multi-Option Appropriate Dispute Resolution Project**
**Family Law ADR**
(650)261-5075
(650) 261-5076

# Office of the Family Law Facilitator

For Assistance With: Child Support, Spousal Support, Paternity, Dissolution, Custody, Visitation, and Health Insurance Needs - for recorded information

**Free services to establish paternity, locating absent parents, establishing, modifying and enforcing child support orders are provided by our local child support agency:**

**San Mateo County - Department of Child Support Services**
555 County Center - 2nd Floor
Redwood City, CA 94063
**www.smcdcss.org**

**Toll-free: 1-866-901-3212**

**CA Department of Child Support**
**www.childsup.cahwnet.gov**

## Things To Bring To Process Your Court Papers:

- ✓ A pen to fill out your forms;
- ✓ Copies of all court documents relating to your case;
- ✓ Information and documents regarding your case;
- ✓ Your 3 most recent paycheck stubs, and your latest tax return;
- ✓ Monthly living expenses; including food, housing, utilities, and health insurance;
- ✓ Names and birth dates for all minor children of the parties;
- ✓ Time-share arrangement between each of the parents; and,
- ✓ Someone to translate, if English is not your primary language.

## Office Of The Family Law Facilitator (650) 261-5010 - message

| Southern Branch | Days | Hours* (Call ahead to verify hours) |
|---|---|---|
| 400 County Center, 2nd Floor<br>Redwood City, CA 94063<br>(650) 363-4590 | Monday<br>Tuesday<br>Wednesday<br>Thursday<br>Friday | 8:30 am - 2:00 pm<br>8:30 am - 2:00 pm<br>Closed<br>8:30 am - 2:00 pm<br>8:30 am - 12:00 pm |

| Northern Branch | Days | Hours* (Call ahead to verify hours) |
|---|---|---|
| 1050 Mission Road<br>South San Francisco, CA 94080 | Wednesday | 8:30 am - 12:00 pm |

***NOTE:** **Hours subject to change without notice.** People are seen on a first-come, first-served basis. A sign-up sheet is posted at 8:00 am and at noon for each session.

**WEBSITES** **www.sanmateocourt.org** **www.courtinfo.ca.gov** **www.icandocs.org/ca**

# Family Law ADR Program

You don't have to go to court to solve your Family Law disputes. ADR stands for Alternative Dispute Resolution; some people call it "Appropriate" Dispute Resolution. It just means finding a different way to resolve your dispute without going through the court process. This program uses mediation and arbitration.

Mediation is a way of solving disputes without going to court. It is often faster, cheaper and less stressful than going to court. A neutral person, called a "mediator" will listen to what you and the other person have to say. The mediator will help you come to an agreement that is acceptable for both of you. Unlike court, it is informal and cooperative.

In arbitration, you and the other person present your case to a neutral person, called an arbitrator. The arbitrator makes a decision on your case and sends it to the court, as well as to you and the other person involved. You decide, ahead of time, if the arbitrator's decision will be "binding" or "non-binding." Binding means that you must follow the decision. Non-binding means you may accept or reject the decision. Arbitration is like a court trial, but less formal.

Mediation can help with many kinds of issues, including:

- Child Support
- Spousal Support
- Parenting Plan (Custody & Visitation)
- How to divide property, like your house, furniture, or investments
- Who should pay the bills or money you owe



Family Law ADR Program mediation is not appropriate when there has been domestic violence or when the parties are unable to communicate and solve problems without fear or intimidation.

**TO CONTACT THE ADR PROGRAM:**

**By mail or in person:**

San Mateo County Superior Court
Family Law ADR Program
400 County Center
Redwood City, CA 94063

**By phone:**

(650) 261-5075
(650) 261-5076

**On the web:**

www.sanmateocourt.org/adr/family law

**OFFICE HOURS:** 8:00 am to 5:00 pm, Monday through Friday

**FEES:** are $100 for the first 90-minute session, ($50 for each person). There is no charge for on-site court connected mediation.

English is spoken. **Spanish is spoken by appointment.** Servicio en español disponible con cita previa.

**RELATED LINKS** to helpful information on family law cases and ADR:

| | |
|---|---|
| **San Mateo County's Bar Association** | **www.smcba.org** |
| **Judicial Council California Courts - Self Help Center for Family Law** | **www.courtinfo.ca.gov/selfhelp** |
| **American Bar Association's ADR Section** | **www.abanet.org/dispute** |
| **Association for Conflict Resolution** | **www.acresolution.org** |
| **Association of Family, Court, and Community Professionals** | **afccnet.org** |

# Divorce/Parent Education Programs

You might consider attending one of the following educational programs for separated/divorced parents:

| Program name | Agency/contact | Phone number |
|---|---|---|
| **Kids First** | Pyramid Alternatives | (650) 270-4441 |
| **For Our Children/Por Nuestros Hijos** | Karina Sapag, MFT | (650) 921-0668 |
| | Teresa Duran, MFT | (650) 218-4548 |
| **Co-parenting Divorce Class** | Bay Area Family Connections | (510) 207-7028 |

# 3 Important Points

1. Children do best when parents get along.

2. Put aside your differences for the benefit of your children.

3. Come to the session prepared to discuss a parenting plan.





## Mediation/Child custody recommending counseling (ccrc), is an opportunity for the parents to meet and work out a parenting plan for their children.

The goals of mediation/ccrc are:

- To help the parents develop their own parenting plan.
- To improve communication between parents.
- To reduce anger and resentment between parents.

If the parents are unable to develop their own parenting plan, the goal is:

- For the counselor to make recommendations that are in the children's best interest.

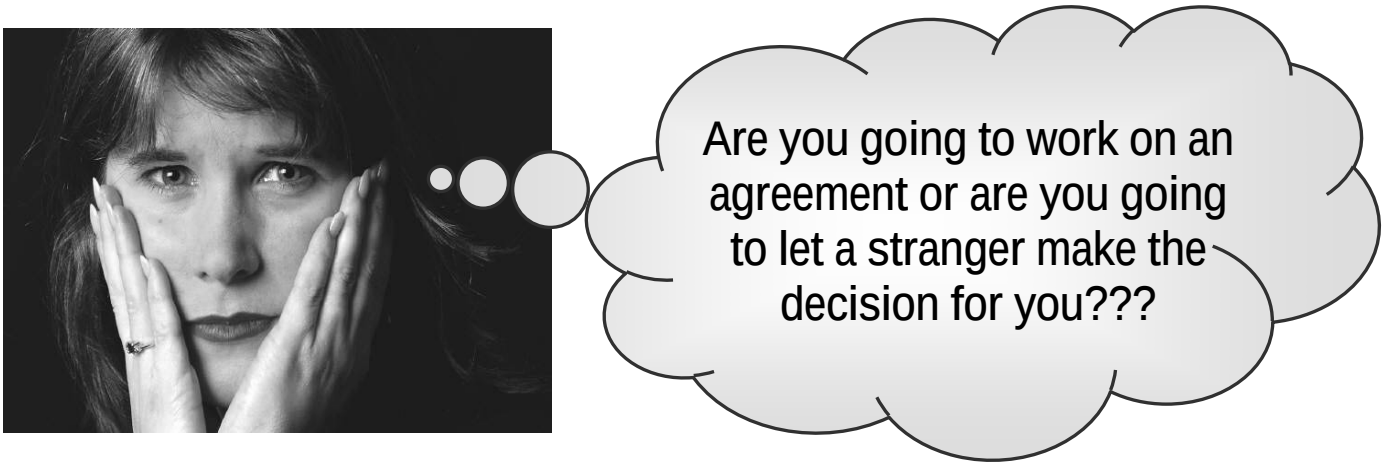
# Mediation/Child custody recommending counseling at Family Court Services

| | |
|---|---|
| **Mandatory:** | You and the other parent must attend mediation/ccrc session if you disagree about custody/visitation issues. |
| **Scheduling:** | Call Family Court Services at (650) 261-5080 to schedule an appointment after you have filed a motion and after you have served the other parent. |
| **Format:** | One session lasting 1 - 2 hours with both parents, unless there is a restraining order and/or domestic violence. |
| **Fees:** | No charge except when there is a late cancellation or you don't keep the appointment. |
| **What is discussed:** | In ccrc, the discussion focuses on developing a parenting plan that is in the best interest of the children.<br><br>In child custody recommending counseling, the counselor will make a recommendation that is in the best interest of the children. |
| **Confidentiality:** | **The sessions are private and the ccrc may only share the information on a limited basis:**<br>1. In the report that is distributed to the parties, their attorneys and the court.<br>2. If the ccrc is called to testify in court.<br>3. If there are separate sessions, what is disclosed by one parent will be shared with the other parent unless that information poses a risk to the one parent.<br>4. Reasonable efforts are made to keep personal information such as residential addresses and contact information confidential.<br>5. The written report will be kept in a confidential section of the court file that is not accessible to the public. |

When confidentiality does not apply:

1. If someone threatens violence to another person, the intended victim and law enforcement will be contacted.
2. If someone is considered likely to harm themselves, the law permits the ccrc to take protective measures.
3. If there is a reasonable suspicion of child, elder or dependent adult abuse or neglect, it will be reported to the appropriate authorities.

# You Have a Very Important Decision to Make




Come to the session prepared to negotiate. This means that you may need to compromise about less important issues.

The mediator/ccrc begins each session utilizing mediation skills to help parents decide what they think is best for their children in order to develop their own custody agreement. However, if it's determined that the parents are unable to resolve all of their custody and visitation issues, the mediator "changes hats" to continue the session in his/her role as a child custody

recommending counselor, and will utilize the information gathered to prepare a report and recommendation to the Court.

## *The mediator/child custody recommending counselor cannot…*

- talk about financial issues (child support, spousal support, property issues)
- receive confidential information from either parent.
- give legal advice
- enforce, modify, or interpret court orders

## *If the parents reach an agreement in mediation…*

- the mediator writes up the agreement and sends a copy to both parents, any attorneys involved, and the judge

## *If the parents do NOT reach an agreement in mediation…*

- the child custody recommending counselor will make recommendations about the issues in dispute
- the judge will make the decision

# IT'S UP TO YOU!

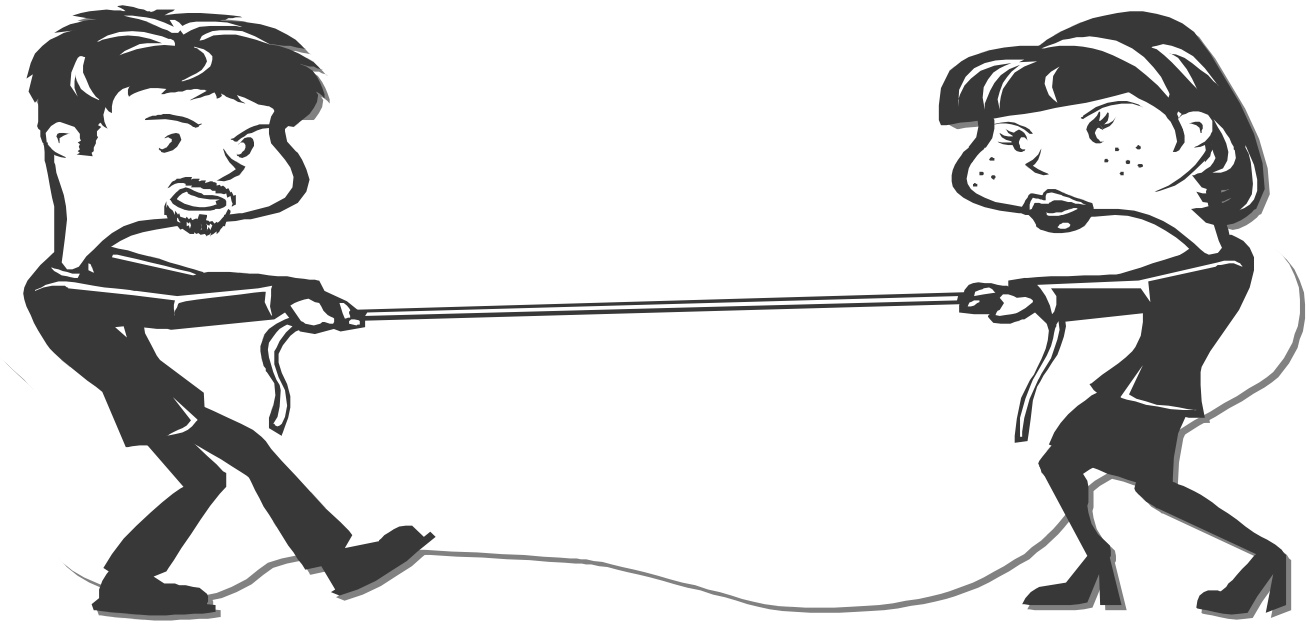
# Do's & Don'ts

| DO | DON'T |
|---|---|
| Come to the session with a positive and a cooperative attitude. | |
| Think before coming to the session about a parenting plan that allows your child to have frequent and continuing contact with both parents. | Come to the session unprepared. |
| Focus on your child's needs. | Focus on your own needs. |
| Acknowledge that a child needs time with both parents. | "Punish" the other parent by withholding the child. |
| Listen respectfully to the other parent in the session. | Let your feelings lead you to behave in an abusive or threatening manner toward the other parent or toward the mediator. |
| Think about your child's needs and schedule, as well as both parents' schedules. | Think that there is one standard plan that fits the needs of all children. |
| Be prepared to compromise about scheduling. | Compromise about your child's health or safety. You do not have to agree to a parenting plan that you feel is dangerous, harmful, or that is not in your child's best interest. |
| Bring up any valid concerns about the other parent's ability to care for your child. | Needlessly bad-mouth the other parent. |

Understand that as your child grows, his/her developmental needs may change, which may require flexibility and changes in your parenting plan.

Assume that the agreement reached will be "carved in stone."

# PLEASE KEEP YOUR CHILDREN OUT OF THE MIDDLE



# Custody Defined



## 1. Legal Custody

Who makes the decisions about the health, education and welfare of the child?

### Joint Legal Custody

means that the parents make these decisions together

### Sole Legal Custody

means that these decisions are made by one parent only

## 2. Physical Custody

Who do the children live with?

### Joint Physical Custody

means that the children spend a significant amount of time with both parents (but not necessarily an equal amount of time)

### Sole Physical Custody

means that the children live primarily with one parent, with a schedule to spend time in the care of the other parent

# Pre-Recommending Counseling Checklist

**Father: Mother: Guardian: Please circle yes or no to each of the following statements:**

**Yes No** The parents shall share joint legal custody. The parents shall consult and cooperate with each other in making decisions and sharing information related to the health, education, and welfare of the child(ren). Each parent shall have access to medical and school records pertaining to the child(ren) and be involved with them. It is each parent's responsibility to request report cards, parent-teacher conferences, progress reports, school calendars, and the like, directly from the child(ren)'s school.

**Yes No** Holidays shall be shared and mutually arranged between the parents.

**Yes No** Transportation to or from parenting time shall be shared and mutually arranged between the parents.

**Yes No** Each parent shall have reasonable phone access to the child(ren) when they are in the other parent's care.

**Yes No** Both parents shall speak only positively to and about the other parent, and encourage third parties to do the same in order to encourage positive feelings in the child(ren) for the other parent. Both parents shall encourage the child(ren) to spend time with the other parent. Neither parent shall discuss the legal proceedings with the child(ren).

**Yes No** Each parent shall communicate directly with the other parent only as necessary regarding the welfare and visitation of the child(ren), not involve third parties, or relay messages through the children.

**Yes No** Each parent shall keep the other parent informed of his/her current address and telephone number to be used only regarding the welfare and visitation of the children.

**Yes No** When either parent schedules a medical, dental, or counseling appointment for the child(ren), that parent shall notify the other parent at least 7 days in advance with the date and time of the appointment, along with the name of the person that the child(ren) is seeing.

**Yes No** Each parent shall ensure that the child(ren) is/are not exposed to any expression of extreme conflict or domestic violence.

**Yes No** Each parent shall ensure that the child(ren) is/are not in the care or presence of, or transported by, any person who is possessing, using, or who is under the influence of any illicit drug, or who is under the influence of alcohol to excess.

**Yes No** Each parent shall ensure that the child(ren) is/are not cared for by anyone who uses physical punishment on the child(ren).

**Yes No** If either parent plans to take the child(ren) out of the state. but not out of the country, for a trip during his/her time with the child(ren), the traveling parent shall notify the other parent at least 14 days in advance with the location they are visiting and an emergency telephone contact number.

**Yes No** If either parent plans to take the child(ren) out of the country during his/her time with the child(ren), the traveling parent shall notify the other parent at least 30 days in advance, with the location they are visiting and an emergency telephone contact number and obtain the other parent's written permission.

**Yes No** Neither parent shall move with the child(ren) out of the 9 surrounding Bay Area Counties (San Mateo, San Francisco, Santa Clara, Marin, Alameda, Solano, Napa, Contra Costa, and Sonoma) without the written permission of the other parent or further orders of the Court.

**Yes No** Each parent shall attend an education program for separated/divorced parents and provide written verification upon completion to Family Court Services.

**Yes No** Changes to the parenting plan may be mutually agreed upon in advance, in writing, between the parents.

# Parenting Plan Timeshare Worksheet

I, _____,
propose the following time-sharing plan:

**CUSTODY**:

Legal (Joint, Mother, Father)

_____

(Name of parent)

Physical (Joint, Mother, Father)

_____

(Name of parent)

**TIME-SHARE:**

The child/children will reside with you during the following days:

_____

_____

The child/children will reside with the other parent during the following days:

_____

_____

**TRANSITIONS:**

The child/children will transition to Mother/Father at the specified times and locations:

_____

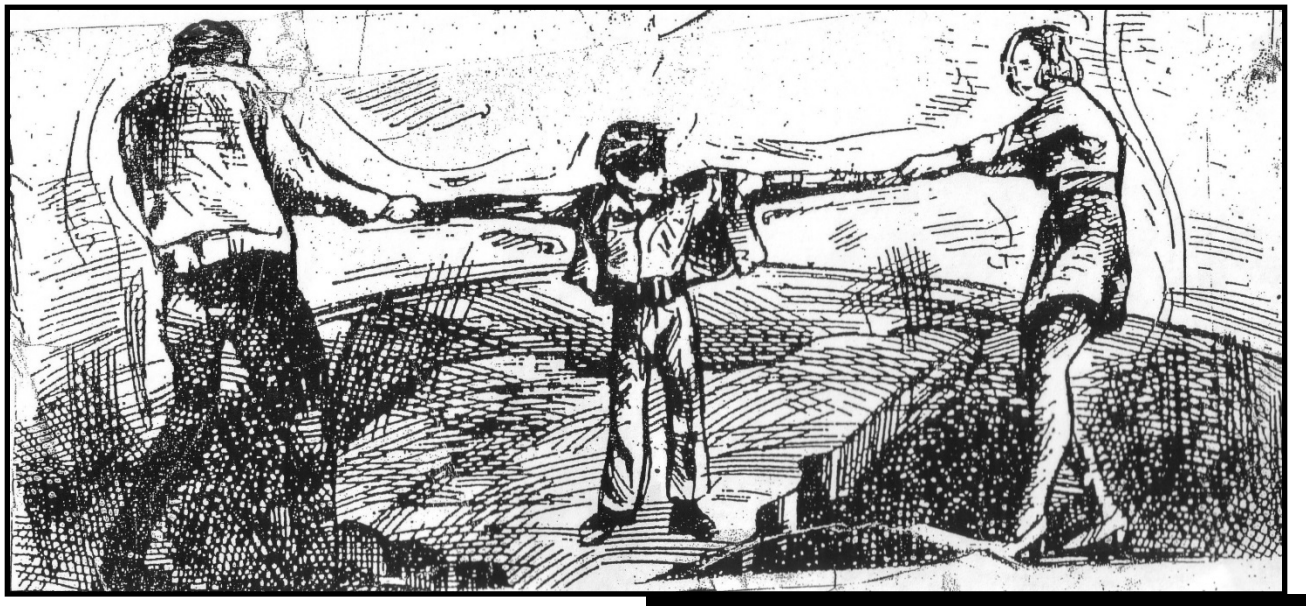
_____

_____

# Parenting Plan Holiday Worksheet

Both parties agree that this holiday and vacation schedule shall take precedence over the regular schedule.

| HOLIDAY | TIME | EVEN YEARS | ODD YEARS |
|---|---|---|---|
| New Year's Eve | | | |
| New Year's Day | | | |
| Kwanza | | | |
| Chinese New Year | | | |
| Passover | | | |
| Easter Sunday | | | |
| Memorial Day | | | |
| July 4th | | | |
| Labor Day | | | |
| Yom Kippur | | | |
| Rosh Hashanah | | | |
| Halloween | | | |
| Thanksgiving | | | |
| Hanukkah | | | |
| Christmas Eve | | | |
| Christmas Day | | | |
| Child(ren)'s Birthday(s) | | | |
| Mother's/Father's Day | | | |
| **Other** | | | |
| | | | |
| **VACATION Schedule** | **TIME** | **EVEN YEARS** | **ODD YEARS** |
| Winter Vacation | | | |
| Winter Vacation | | | |
| Spring Vacation | | | |
| Spring Vacation | | | |
| Summer Vacation | | | |



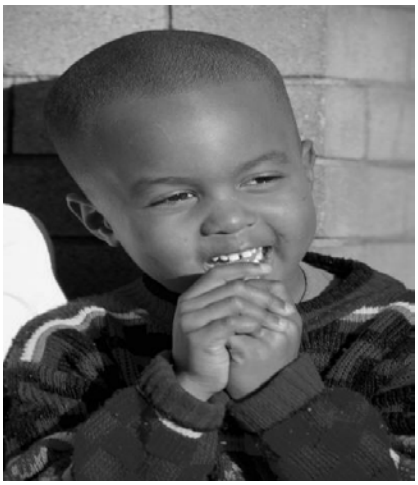
## Helps children adjust to parents' separation

- Working out the parenting plan with the other parent
- Encouraging the children's relationship with the other parent (thereby helping the children avoid loyalty conflicts.)
- Keeping money issues from the children and focusing on what the children need.
- Communicating with the other Parent in person (by telephone, Fax or email, but not in front of the children)

## Prevents children from adjusting to parents' separation

- Involving children in the dispute about the parenting plan
- Asking children to choose between the parents
- Taking advantage of children and money as leverage to get what you want
- Using children to carry messages

# How Children Experience Separation, Divorce, and Parental Conflict



The experience of separation is different for children than it is for adults. Adults will seek relief from unhappiness, but children don't have the tools to do this.

Children tend to worry about their parents and to blame themselves for the separation and/or divorce.

## Before Separation

- ✓ Children feel the tension in the home
- ✓ Children worry what will happen to their parents and what will happen to them.
- ✓ Children feel anxious. They may have trouble sleeping or have problems in school.
- ✓ Children may have problems with their behavior.

## During Separation

- ✓ Children face shock and denial. They think, "This can't be happening!'
- ✓ Children worry that they may lose their parent's love.
- ✓ Children worry that they may be rejected by a parent.
- ✓ Children worry about their future. They think, "Who will take care of me?"

## After Separation

- ✓ Children still worry about who will take care of them.
- ✓ If a parent is sad and unable to care for the home or the children, the child may try to do the parent's job.
- ✓ It can be hard for children to go back and forth between the parents' homes, especially if there is conflict between the parents.
- ✓ Children can feel deep sadness.

# Domestic Violence



**Children are affected in negative ways when there is violence between their parents.**

## What is Domestic Violence?

- Physical abuse (punching, choking, slapping)
- Sexual abuse (rape, non-consensual sex acts)
- Verbal, emotional and mental abuse (yelling, cursing)
- Stalking (showing up at events uninvited, using GPS to track)
- Threats and coercion, intimidation (written or verbal)
- Isolation (preventing from leaving home or making phone calls)
- Economic abuse (limiting access to funds and accounts)
- Power and control (making someone afraid)



## Effects of Domestic Violence on Children:

### Out-of-control emotions:

- Anxiety and depression
- Helplessness and fear

### High Risk Behaviors

- Alcohol and drug abuse
- Aggressive behavior

May become a "victim" or a "perpetrator"





Community
Overcoming
Relationship
Abuse

24 Hour Hotline
**(800) 300-1080**

# If you have been victimized by domestic violence:

- ✓ You may be able to get a restraining order
- ✓ Make a safety plan
- ✓ Protect your children; talk with them about safety concerns
- ✓ Remember that any type of violence or abuse hurts children even if it is "only" seen or heard
- ✓ Get help - for yourself and the children

**If there is a Restraining Order or a Declaration of Domestic Violence, that person has the right to request:**

- A separate session (to meet with the mediator/child custody recommending counselor without the other parent present)
- A support person present in the session. (To provide moral and emotional support for the protected party)
- Their address & phone number be kept confidential.

**If the Court finds that one parent has perpetrated domestic violence against the other parent:**

- This may affect the ability of that parent to have physical and/or legal custody of the children (see next 3 pages).

# Domestic Violence and Custody

If you are involved in a domestic violence case, and you have children, here is important information about laws that affect you.

## What is domestic violence?

Domestic violence can be spoken, written or physical. It may include hitting, kicking, hurting, scaring, throwing things, pulling hair, pushing, following, harassing, sexually assaulting, or threatening to do any of these things. It also includes any other action that injures someone or makes someone afraid of being hurt.

## What is "custody"?

Custody means:

- Physical custody - who the child lives with
- Legal custody - who makes important decisions about the child such as health, education and religion.

## Who will get custody of the children?

If a court decides there is domestic violence (now, or in the past 5 years), the judge must follow special rules to decide who gets custody of the children.

## How does the judge decide if there is domestic violence in my case?

The judge may believe that domestic violence has occurred in your case if:

- another court (civil, criminal, or probate) decided that domestic violence occurred within the last five years, or;
- there was a domestic violence criminal conviction (or similar conviction) within the last five years.

*To read the actual law, see Family Code §3011 and §3044 on the next page.*

## What if the judge decides there is domestic violence in my case?

Usually, the judge decides NOT to give custody to the person who committed domestic violence.

## What factors will the judge take into consideration?

The law requires the judge to award custody to the parent who did not commit the domestic violence. However, here are some factors that the court will consider:

- what is in the best interest of the child;
- if the person has successfully completed a 52-week batterer's program;
- if the person has successfully completed court-ordered alcohol or drug abuse program or parenting class;
- if the person has followed all terms of their probation, parole, and/or current protective or restraining orders;
- if the person has committed any other acts of domestic violence.

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## Have questions? Contact:

### Office of the Family Law Facilitator

San Mateo County Superior Court
400 County Center, 2nd Floor
Redwood City, CA 94063
650-363-4590

### Family Court Services

San Mateo County Superior Court
400 County Center, 6th Floor
Redwood City, CA 94063
650-261-5080

# Family Code Section 3044

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 that counseling is appropriate.

(4) Whether the perpetrator has successfully completed a parenting class if the court determines the class to be appropriate.

(5) Whether the perpetrator is on probation or parole, and whether he or she has compiled 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.

# Family Code Section 3044

Continued

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) (1) 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 6203, including, but not limited to, a crime described in subdivision (e) of Section 243 of, or Section 261, 262, 273.5, 422, or 646.9 of, the Penal Code.

(2) 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 proceedings 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 on the recommendation of the Family Court Services staff, but shall consider any 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 mediation in the case.

# Tips for Parents

Accept your feelings, but don't let them control your life.

**Take time to make decisions.**

Talk to people you trust about your issues, don't use your children as "therapists" or "sounding boards."

**Pick wise friends, therapists and lawyers who don't have their "own agenda."**

Avoid an adversarial approach.

**Give the children time and a safe place so they can talk about their feelings.**

Know that "This too, will pass."

*Remember:..*

*You stop being partners*
*but...*
*You continue to be parents.*



# Factors to Consider
# When Making a Parenting Plan

- ✓ The child's age, developmental stage and needs (see next page)
- ✓ The child's temperament and how the child deals with change
- ✓ The child's attachment to each parent and to his/her siblings
- ✓ Safety concerns: domestic violence, child abuse, substance abuse
- ✓ Previous parenting arrangements
- ✓ The child's school, extracurricular, and social activities
- ✓ Both parents' strengths and weaknesses
- ✓ Providing a consistent, simple, and predictable schedule with smooth transitions between the parents' homes
- ✓ Ensuring that the child has "frequent and continuing contact" with both parents
- ✓ Where both parents reside and their work schedules
- ✓ The level of conflict between the parents. (Higher levels of conflict require more detailed parenting plans)

**Remember:**

**This is about your children**

# Developmental Needs of Children

## Infants, Toddlers and Pre-School



- Tend to have a primary bond but can bond to several people
- Need a consistent schedule and lots of nurturing
- Have difficulty tolerating long separations from the primary caregiver
- The schedule should provide more frequent, shorter periods of time with the other parent



## School Age Children

- Need an emotional foundation that provides confidence and self-worth
- The schedule should allow them to focus on school

## Pre-Adolescents



- Need help with school and peer problems
- The schedule should allow them to spend time doing organized activities and communicating with friends



## Adolescents

- Want their plans to be important, too
- May prefer to have a “home base”
- Need consistent rules in both households
- The schedule should be flexible
- Want to spend time with their peers, rather than their parents

# How to Help Your Child Adjust to Your Separation/Divorce

## DO:

- Tell the child briefly what is happening, where everyone will live, and when he/she will see each parent.
- Explain that separation/divorce is an adult decision that is made when parents can't get along with one another. Don't burden the child with too many details.
- Reassure the child that he/she didn't cause the separation/divorce and that he/she can't change the decision.
- Reassure the child that separation/divorce doesn't happen between children and parents.
- Encourage the child to talk about how he/she feels and what he/she thinks. Encourage the child to ask questions.
- Keep a clear and reliable schedule for the child.
- Speak respectfully about the other parent.
- Reach out for support for yourself, if necessary.
- Allow the child to adjust to having two homes - one with each parent.
- Allow the child to love both parents.

## DON'T:

- Fight - physically or verbally - with the other parent. Witnessing family violence hurts children of all ages.
- Put the child in the middle. Don't ask him/her to carry messages, deal with money matters, or spy on the other parent. Don't make the child choose between parents.
- Talk about legal and financial issues (child support, spousal support, etc.) with the children.
- Criticize the other parent in front of the child. This only creates a loyalty conflict for the child.
- Rely on the child for emotional support.

# Transitions

Transitions between parents' homes can be the most stressful times for children.



## Here are some ways to make transitions less stressful:

Keep the focus on the children.

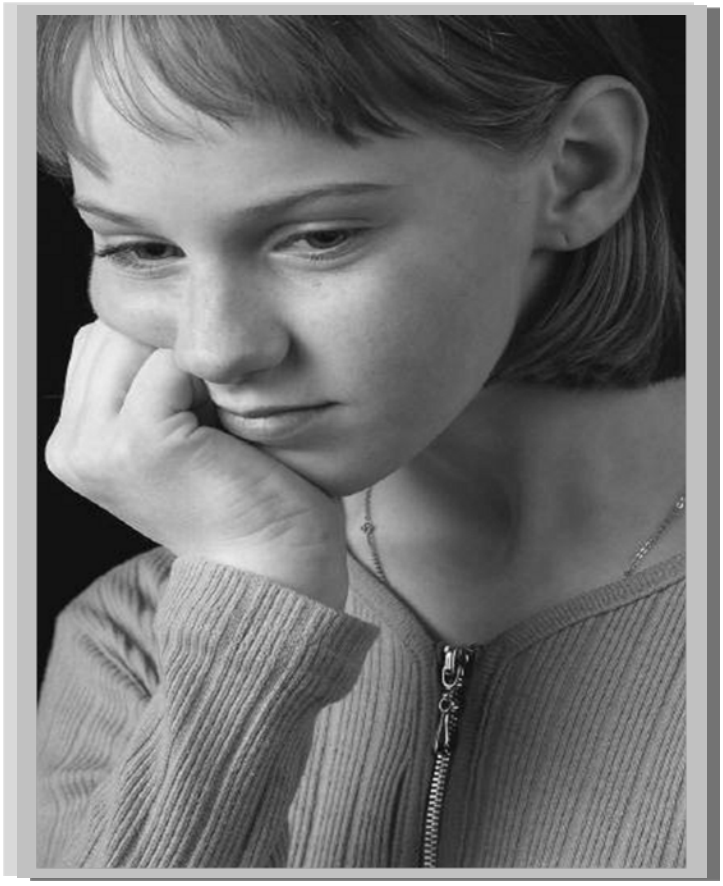
Limit conversations to discussing only what is necessary to help the children.

Help the children say goodbye to one parent and then be welcomed by the other parent.

Help the children transfer clothing, schoolwork and/or special toys, to the other parent's home.

Be polite and respectful.

# When is it time to consider counseling for the children?



- **It is normal for children to have some behavioral and emotional problems for a while.**
- **Children usually react to parents' stress.**
- **Sometimes it's the parents who need help!**
- **Consider counseling for children if problems are severe and don't go away.**
- **Counseling may help if children are shutting down and not talking.**

# Why an Absent Parent Should Re-enter a Child's Life



## *Child's Needs:*

To have both parents in his/her life.

To know both parents love him/her.

To be financially supported by both parents.

To know why the absent parent has not been there.

To trust that the absent parent won't leave again.

## *Custodial Parent's Wish Might be:*

To have the absent parent be gone permanently.

To have the child believe the absent parent does not love him/her.

To receive support and be left alone.

To have the child believe the custodial parent's version.

To have the absent parent leave permanently.

# 2 Models of Parenting after Separation



## Parallel Parenting

Each parent raises the children independently of the other parent.
Parents talk to one another only in an emergency.
There is little consistency between homes.
There is less flexibility for both children and parents.

ADVANTAGE:
Conflict is avoided between high-conflict parents.

DISADVANTAGE:
Children need to act as if the other parent does not exist.



## Cooperative Parenting

Parents work together in raising their children in 2 homes.
Parents talk regularly.
There is more consistency between homes.
Major decisions are made together.
There is more flexibility for both children and parents.
Transitions are usually smoother for children.

ADVANTAGES: All of the above!
DISADVANTAGES: None. (Unless the parents are in high conflict)

# SOCIAL ASPECTS OF SEPARATION



- Different role and identity - "I'm single again…"
- Dividing up friends, extended family, changing vacation spots and various group relationships.
- Friends and family might take sides. Some of these people fuel the fire. This is commonly known as "tribal warfare." Don't let them do this!
- People that were formerly available to the children are no longer safe havens for them.

# Emotional Aspects of Separation

Separation involves a transition from being partnered to being single, regardless of whether or not you and the other parent were married. The separation may be a change that you began and you may believe it to be a positive change. But loss of a relationship is the type of change that can bring forth a variety of unexpected and mixed feelings: happiness, anxiety, sadness, anger and confusion.



For parents, the end of the relationship or the marriage can be a serious loss. The emotions that arise from such a loss can feel just like the grief one feels when someone close to them has died.

It is natural to grieve the loss of a dream, the loss of a partner, the loss of a happy childhood for your children, because loss means that something you once held close and precious has gone away forever.

It is very important to learn how to accept loss and the feelings that go with it. This is called the grieving process.

(From the Co-parenting Survival Guide by Thayer & Zimmerman)

# How to Develop a Successful Co-parent Relationship

*As co-parents, you and the other parent are in the "business" of raising your child in separate homes.*



## *Remember…*

1. Treat the other parent with respect (just as you would want to be treated)! Be business-like.
2. Respect and encourage your child's relationship with the other parent.
3. Talk regularly with the other parent about the child. Make an appointment to discuss concerns, rather than when you exchange the child.
4. Communicate directly with the other parent. Resolve conflicts between you without putting the child in the middle.
5. Be specific. Don't make assumptions.
6. Don't insist on something that doesn't work. Do what is in your child's best interest.
7. Share the tasks of parenting.
8. Remember to express appreciation, when appropriate, for things the other parent has done.
9. Keep emotions to a minimum. Stay focused on the issue(s) at hand.
10. Look to other people in your life for support and validation; don't expect it from the other parent.

# Resolving Conflict between Parents

**Children** need two parents who can work together by putting aside their feelings for the sake of their children.



**You** and the other parent are parents together. It is not possible or desirable to eliminate the other parent from your child's life. Your child needs both parents to find a way to raise him/her together.

1. Communicate with your child's other parent because you love your child and care about his/her future. Don't try to "win," but do try to solve the problem(s) at hand.
2. Focus on your child's best interest, rather than your own needs.
3. Try to make sure that you understand the purpose of the communication so that your conversation stays on track.
4. Don't argue. Find another time to talk or start over.
5. Avoid provocative remarks.
6. Politely end prolonged arguments.
7. Apologize for your mistakes.
8. Look for something you can agree on.
9. Look for a partial solution.

# How to Manage Anger
# When Talking to the Other Parent

- **Take your time** - don't respond impulsively!
- **Listen, Listen, Listen** - especially if you want to be heard by the other parent.
- **Let the other parent finish what she/he is saying**. Who knows? You might just agree!
- **Talk nicely**. Imagine that your interactions are being videotaped and will be played for your children when they are adults.
- **Leave the past alone.** Focus on resolving the issues at hand. Don't discuss old marital/relationship issues. If your feelings are getting in the way, consider seeing an individual therapist.
- **Keep it short.** Often, the less said, the better.
- **Relax.** Use stress management techniques.



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