

INTRODUCTION **CUSTODY MEDIATION**

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There is a "presumption" in New Mexico that joint custody is in a child's best interests. As the legislature has defined it, joint custody does not necessarily imply an equal division of financial responsibility for a child, nor an equal sharing of time with or direct responsibility for a child. Rather, joint custody means that each parent shall have significant, well-defined periods of responsibility for the child, each parent shall have responsibility for the child's financial, physical, emotional and developmental needs, and the parents shall consult with each other on major decisions involving the child before implementing those decisions. A child's interests, according to the legislature, are best served by having two active, involved, responsible parents, and a divorce should not act as a bar to that goal. These standards and other specific legislative concerns are set out in §40-4-9.1 of the New Mexico Statutes.

Recognizing the limitations of an adversarial proceeding in uncovering a child's best interests, and recognizing that no one knows the children better nor cares more about their welfare than the parents themselves, the legislature has directed our courts to refer any contested custody case to mediation, "if feasible." If a judicial district chooses to establish such a program, it will be funded by a \$30.00 surcharge on all new or reopened domestic relations cases, and by fees paid by parents involved in the program on a "sliding-scale" basis.

THE MEDIATION PROCESS

San Juan County's District Judges have elected to establish a Domestic Relations Mediation Program within this legislative framework. The program will be continually evaluated and modified as it develops, but for starters it will work as follows:

1. At the time of the filing of a Response or other pleading joining the issue of child custody, the attorney filing the pleading shall certify to the court that custody is an issue in the case.
2. Upon filing of that Certificate the Clerk will enter a Notice of Mediation to the parties to view the video entitled "In the Best Interest of the Child" at a location listed on the enclosed list of locations. The tape must be viewed within ten (10) days of the Notice. The clerk will also send parties an informational package which includes the cover letter, the mediation brochure, the initial questionnaire, and model co-parenting guidelines. The Notice will also require the parties to immediately begin mediation and to complete the mediation process within 45 days of the first meeting with the Mediator. A copy of the Notice will be sent to the court-appointed Mediator and both attorneys.

3. The Mediator will inform the Court within two (2) days of the receipt of the Notice if he/she has a conflict of interest or other bar to accepting the case.
4. It will be the responsibility of the parties to make appointments with Mediator at their mutual convenience; however, the Mediator should contact the attorneys if no such appointments have been made within five days of the date for completion of viewing the tapes.
5. If a Mediator becomes convinced at any point in the mediation process that no joint custody plan, even if agreed to by the parties, will be in the children's best interest, he/she should so inform the court and the attorneys involved, and await further instructions from the court.
6. The Mediator will meet with the parties for up to seven (7) hours within the 45-day period running from the date of the first meeting. The length of the sessions shall be set at the discretion of the Mediator in agreement with the parties.
7. When mediation has been wholly or partly successful, the Mediator will send to each attorney, but not the Court, a parenting plan signed by the Parties, settling some or all of the matters in dispute. The content of the parenting plan is discussed below.
8. At the completion of Mediation, the Mediator will send to the Court a Mediator's Report stating whether all custody issues have been resolved.
9. Mediators will be compensated at the rate of \$60.00 per hour for up to seven hours work on each case. The Mediator will submit a bill to the Clerk with the Final Mediation Report indicating the results of the mediation. The Mediator will be paid by the Court Administrator.

THE PARENTING PLAN

In pursuit of workable joint custody arrangements, the court, each time joint custody is awarded, must approve a parenting plan dividing a child's time and care into period of responsibility for each parent and also, when appropriate: providing for the child's religion, education, child care, recreational activities, and medical and dental care; designating specific decision-making responsibilities; designating methods of exchanging information about the child, transporting the child, and maintaining telephone and mail contact between the absent parent and the child; setting forth procedures for future decision-making and dispute-resolution; and providing such other guidance as will facilitate parenting in the child's best interests.

The ideal product of a successful mediation, then, will be a complete parenting plan resolving all of the issues set out above. While some mediation will produce that result, others will resolve only some of the issues, and some mediation will be unsuccessful in obtaining any

agreement at all concerning custody. While there is no "approved" parenting plan, and certainly no perfect parenting plan, as an initial proposition the court suggests that mediation be performed with an eye to completing the form of Parenting Plan attached to these instructions.;

Any suggestions as to how the form can be improved, or why it should be scrapped, will be welcomed by the court; we expect that over time the best suggestions for improving the mediation program will come from the mediators themselves.