

1. FAMILY MEDIATION CENTER (FMC)

a. MEDIATION GENERALLY

i. Statutes and Court Rules

The widespread use of mediation in Nevada family law cases has a statutory basis. The 1991 Nevada Legislature passed what was enacted as NRS 3.500, creating mandatory mediation for “a county whose population is more than 100,000 and less than 400,000 (i.e., Washoe County) as follows:

1. In a county whose population is more than 100,000 and less than 400,000, the district court shall establish by rule approved by the supreme court a program of mandatory mediation in cases which involve the custody or visitation of a child. A district court in a county whose population is 100,000 or less may establish such a program in the same manner for use in that county. The district courts in two or more counties whose populations are 100,000 or less may establish such a program in the same manner for use in the counties in which the courts are located.

2. The program must:

(a) Require the impartial mediation of the issues of custody and visitation and any other nonfinancial issue deemed appropriate by the court.

(b) Allow the court to exclude a case from the program for good cause shown, including a showing of a history of child abuse or domestic violence by one of the parties, ongoing private mediation or residency of one of the parties out of the jurisdiction of the court.

(c) Provide standards for the training of the mediators assigned to cases pursuant to the rule, including but not limited to:

(1) Minimum educational requirements, which may not be restricted to any particular professional or educational training;

(2) Minimum requirements for training in the procedural aspects of mediation and the interpersonal skills necessary to act as a mediator;

(3) A minimum period of apprenticeship for persons who have not previously acted as domestic mediators;

(4) Minimum requirements for continuing education; and

(5) Procedures to ensure that potential mediators understand the high standard of ethics and confidentiality related to their participation in the program.

(d) Prohibit the mediator from reporting to the court any information about the mediation other than whether the mediation was successful or not.

(e) Establish a sliding schedule of fees for participation in the program based on the client’s ability to pay.

(f) Provide for the acceptance of gifts and grants offered in support of the

program.

(g) Allow the court to refer the parties to a private mediator for assistance in resolving the issues.

3. The costs of the program must be paid from the account for dispute resolution in the county general fund. All fees, gifts and grants collected pursuant to this section must be deposited in the account.

4. The district court in any county which has establish[ed] a program pursuant to this section shall submit a report to the director of the legislative counsel bureau for distribution to each regular session of the legislature on or before March 1 of each odd-numbered year. If two or more district courts establish such a program, only one of those courts is required to submit such a report for that program. The report must include a summary of the number and type of cases mediated and resolved by the program during the previous biennium, the fees collected by the program and any gifts or grants received by the court or courts to support the program. The report must also contain suggestions for any necessary legislation to improve the effectiveness and efficiency of the program.

5. This section does not prohibit a court from referring a financial or other issue to a special master or other person for assistance in resolving the dispute.

The 1997 Legislature passed an essentially identical provision mandating such a program “in a county whose population is 400,000 or more (i.e., Clark County).

ii. Cases

There are no cases as of the publication of this Manual substantively discussing the mediation statutes. However, the Nevada Supreme Court has noted that at one time, the agency in Clark County now known as FMC (the “Family Mediation Center”) was known as “FMAC,” for “Family Mediation and Assessment Center”:

In 1997, EDCR 5.70 was substantially rewritten to reflect that FMAC no longer performs court-ordered assessments. Instead, FMAC now operates the district court’s mandatory mediation program for child custody matters in Clark County. *See* EDCR 5.70

Matter of Fine, 116 Nev. 1001, 1013 n.13, 13 P.3d 400, 408 n.13 (2000).

iii. Discussion

Mediation is a cooperative problem-solving process where a neutral third party assists family members to clearly define the issues in dispute and to try to reach agreement. The mediator is not supposed to take sides or make decisions for others, but merely guide the process. The mediator helps the parents, who are often engaged in highly emotional battles over “custody” and “visitation,” develop plans for their children that are in the family’s best interest. When parents use mediation successfully and develop a “parenting plan,” the agreement can be submitted to the court as a settlement of their legal dispute, and further litigation is unnecessary.

Mediation supports the parents' rights to make fundamental decisions regarding their children.

iv. Local Rules

The practices of mediation in Washoe and Clark Counties have grown separately, and are largely products of the local rules and practices governing them. Accordingly, the balance of this section will treat them separately, by location.

b. FAMILY MEDIATION PROGRAM OF THE EIGHTH JUDICIAL DISTRICT

i. Scope of Services

The "Mission Statement" of the Clark County FMC is: "Preserving family integrity and protecting children's rights during the restructuring of families as the result of separation, divorce or other family matters."

The majority of services provided by FMC are described in EDCR 5.07 and 5.70. Pursuant to EDCR 5.07, all parties involved in all domestic actions under Chapters 125, 125A and 126 of the Nevada Revised Statute must complete the seminar for separating parents approved by the family division of the court (Known as "Children Cope with Divorce," or "Transparenting"). As the program coordinator for the divorce educational seminar, FMC monitors the program and provides quarterly in-service training for the private providers.

Pursuant to NRS 3.475, EDCR 5.70 provides mandatory mediation services to families through FMC in contested domestic relations proceedings where custody of children or visitation with children are disputed issues. This includes divorce, paternity, guardianship, termination of parental rights, stepparent adoptions and grandparent, relative, and stepparent visitation. The mediation services function independently of any other court proceedings. Pursuant to EDCR 5.70, FMC does not mediate child support or financial-related issues.

FMC provides confidential mediation to parents involved in contested child custody matters. FMC is under the administration of the Eighth Judicial District Court, Family Division. The benefits of proceeding by way of mediation are seen as including improving communication between the parents, defusing emotional conflict, identifying underlying needs, serving as a resource for children's needs and parenting skills, and helping parents adapt to change.

ii. Program Procedures

(1) Accessing Services

Upon the filing of an answer to a contested child custody motion, parents are mandated to attempt to resolve their dispute through mediation, prior to their trial date. Parents may obtain mediation services through the private sector or FMC. Parents may access the services of FMC by:

1. Stipulation & Order to Mediation
2. Request & Order for Mediation¹
3. Order of the Court

Mediation is completed within 45 days of the referral to FMC. The Family Mediation Specialist assists the parents to:

1. Focus on the needs of the child;
2. Identify areas of stability for the child;
3. Identify the strengths of the family; and
4. Develop and promote continuity in the child's relationship

with each parent.

(2) Services Provided

(a) Access/Visitation Mediation

Mediation services are provided to parties involved in paternity or child support matters before the Court. Parties who are paying child support but have been unable to pursue access/visitation through Family Court are afforded an opportunity to explore resolution of access/visitation issues through FMC. The access/visitation mediation is funded through the Department of Health and Human Services.

(b) Adoption Mediation

Mediation may be requested by the adoptive parents or biological parents as it relates to open adoptions. Adoption mediation affords the adoptive parents and biological parents an opportunity to define open adoption and the scope of access the biological parent may have with the child upon the completion of the adoption.

(c) Dependency Mediation

Mediation in child protection can help parents, children, child protection workers, attorneys, and others involved reach agreements acceptable to everyone that are also in the best interest of the child. Mediation is effective because it provides a forum for all the parties involved to voice their concerns and discuss options to find the best possible arrangement for the child's care. Mediation can be used at any point in the proceedings for almost any purpose.

(d) Kinship Mediation

Kinship mediation may involve relatives, biological parents, child protection workers, attorneys, and others. The purpose of kinship mediation is to explore alternate placements for children whose parents are not in a position to care for them due to their own limitations or lack

¹ The Eighth Judicial District Court has a form order entitled FMC Request and Order for Mediation - NRS 3.475.

of their ability to maintain a safe environment for their children. Kinship mediation allows all parties to explore alternative placements for children within their family systems as opposed to foster care placements. Issues to be mediated may include relative placement, access to children by biological parents, visitation schedules and location of visitation for biological parents, and whether the visitation will be supervised.

(e) Mandatory Mediation

In accordance with EDCR 5.70, an individual filing a complaint or motion, or a responsive filing to a complaint or motion for contested child-custody related divorce or post-divorce child-related issues is mandated to attend mediation toward the resolution of custody/access issues.

(f) Marathon Mediation

Due to the geographical location of the parties, the Court may order marathon mediation while the parties happen to be present in the jurisdiction, for a court hearing or otherwise. Marathon mediation involves parties spending the entire day at FMC with the Family Mediation Specialist who attempts to assist the parties in reaching resolution to their child custody dispute.

(g) Re-Mediation

Parties who have mediated through FMC may re-mediate their parenting agreement. Should the parenting agreement need to be modified, the parties may return to mediation prior to initiating further court action, or the parties may be ordered for re-mediation by the court.

(h) Telephone Mediation

Given the geographical location of one or both parties, the court may order telephone mediation services. When one party resides out-of-state, arrangements are made for the out-of-state party to be present by telephone for the mediation sessions. The party residing in-state will be required to come into FMC for the scheduled appointments. In the event that both parties reside out-of-state, both will be allowed to participate in mediation by telephone.

(3) FMC Mediation Sessions

Each family referred for mediation is seen for a minimum of two sessions totaling four hours. Extended mediation services are provided as needed.

Mediation is held in private and all communications, verbal or written, are confidential and are not to be disclosed, even upon waiver of the privilege by either or both parties, except where the Family Mediation Specialist is required to report any information which falls within the scope of child abuse reporting requirements.

Domestic violence issues are serious concerns to FMC. Referrals for services in which

these allegations are raised relative to custody and visitation issues requires careful screening to assess the appropriateness of proceeding in mediation. FMC uses a Domestic Violence Assessment Tool to determine if the parties want to participate in mediation on all referrals where there are allegations of domestic violence.

When mediation is successful, the Family Mediation Specialist and the parties carefully draft a comprehensive agreement which includes, but is not limited to, the following:

1. Designation of legal and physical custody and how this is related to parental authority and decision making;
2. A weekly schedule for the child and each parent;
3. A holiday schedule for the child and each parent;
4. A summer schedule for the child with each parent;
5. Vacation time (i.e., time that the child may spend each year without regularly scheduled physical contact with the other parent);
6. Provision for protecting the child, such as supervised visitation if high risk factors are present (e.g., a history of substance abuse, debilitating illness, acts of domestic violence by one or both parents, child abuse, or neglect); and
7. Special day arrangements (e.g., birthdays of the child, siblings, and parents).

Partial Parenting Agreements are completed when parties may not have resolved all their issues in the mediation process. The issues upon which parties cannot agree are submitted to the court. This still allows the parties the major portion of self-determination while saving the court time and may avoid the necessity for an evidentiary hearing.

(4) Fees

FMC provides mediation services on a sliding scale based upon each parent's individual annual gross income.

(5) FMC Child Interviews

At the direction of the court, FMC may interview a child regarding their parent's divorce, feelings about the present custodial arrangement, timeshare, school schedule, familial relationships, etc. Interviews occur with children between the ages of 4 and 18. Parties are assessed \$50.00 per party for child interviews through FMC.

The interviews are child focused and address the child's relationship with both parents, school, extracurricular activities, sibling relationships and the child's concerns related to their parents' custodial conflicts. Children are *not* asked if they have a custodial preference. Parents are not interviewed during the child interview, nor is any collateral information provided by either parent reviewed by the Family Mediation Specialist. At the direction of the court, the Family Mediation Specialist may be requested to ask specific questions which may benefit the court in making a determination in the matter.

(6) FMC Child Reunification Services & Parent/Child Observations

In child custody matters, often children have been estranged from one parent due to hostility between the parties, the geographical location of one parent, unresolved emotional issues, remarriages or allegations of drug abuse, child abuse or sexual abuse. At the request of the court, FMC assists in reunifications and re-establishment of parent/child relationships with non-custodial parents. These reunifications are facilitated by a Family Mediation Specialist and occur at FMC. Parties are assessed \$50.00 per child per litigant for parent/child reunification services and/or parent/child observation services.

Child reunification services and parent/child observations are time-limited. The minimum scheduled time for child reunification services is two hours. Subsequent child reunification services may be scheduled if the child is reluctant to spend time with the non-custodial parent.

(7) FMC Criminal History/Juvenile Records Check

At the direction of the Court, FMC obtains criminal history/juvenile records for families involved in contested child custody disputes. Upon receipt of the records, the information is forwarded to the Court.

iii. Parenting Plans

There is no specific statutory requirement for the creation of a Parenting Plan. However, EDCR 5.81 requires a resolution of parent/child issues before a case proceeds to trial:

(a) Unless otherwise directed by the court, all contested family matters involving minor children must be submitted to the judge *prior to the setting of a trial date*. A request that the judge consider these issues is made by the filing of a motion to resolve parent/child issues. The judge may refer contested child custody or visitation cases to the Family Mediation Center (FMC) for mediation. Any referral to FMC by the judge must be returned to the judge when completed by the Center unless otherwise directed by the judge.

(b) Once a judge has resolved parent-child issues the same issues may not be raised by the parties without complying with Rule 5.29.

A comprehensive plan will incorporate the coparenting desires of the parties and be placed into a format that is legally sufficient and understandable by the parties. Essentially, it is a “rule book” for parents to reference as questions or problems arise. A non-exhaustive list of topics to be addressed in such a Parenting Plan would include:

- identity of the parties
- identity of the children and dates of birth
- intent of the plan
- how changes to the plan can be made
- legal custody provisions
- physical custody provisions: regular, holiday, and vacation timeshare

transportation
any special provisions
medical insurance coverage
child support notices
child custody notices

iv. Administrative Information

The FMC professional staff has specialized training in divorce and child custody mediation and at least three years post-master's experience.

Family Mediation Specialists adhere to the Model Standards of Conduct for Mediators as jointly developed by the American Arbitration Association, American Bar Association, and Society of Professionals in Dispute Resolution.

FMC is open Monday through Friday from 7:00 a.m. to 6:00 p.m.