

Custody & Parenting Time in Family Court for Advocates Part II: Making Domestic Violence Visible

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Family Court Enhancement Project

Training for Advocates

- Part I – Basic Overview
- Part II – Making Domestic Violence Visible to the Court
- Part III – Intersections Between OFPs & Other Court Proceedings

QUICK REVIEW

Part I: Overview of Court & Laws related to Custody and Parenting Time

PHYSICAL CUSTODY

where a child resides

JOINT PHYSICAL CUSTODY

parenting time schedule between the two
parents

PRESUMPTIONS FOR CUSTODY

IF domestic abuse has occurred,
presumption for sole legal or physical
custody to non-abusing parent.

If DV, the Court is to consider:

- The nature and context of the abuse;
- The implications of the abuse for parenting;
and
- The implication of the abuse for the child's safety, well-being and developmental needs.

Best Interest Factors

- Special needs
- Domestic Abuse
- Physical, mental, or chemical health issues
- Changes to home, school, community
- History caring for child

Best Interest Factors

- Benefit to child in maximizing parenting time with both parents and detriment in limiting parenting time;
- The disposition to encourage & permit frequent & continuing contact by the other parent (DV exception)
- The ability of the parents to cooperate, share information, minimize child's exposure to parental conflict and utilize dispute resolution mechanisms.

Parenting Time

- **Standard = best interests of the child.**
- Rebuttable presumption for 25%
- Can Restrict or deny time = Endangerment Standard

Domestic Abuse in Statutes

- **GAL Appointment**
- **Best Interest of Children Standards**
- **Parenting Time**
- **Relocation Out of State**
- **Parenting Time Expeditors**
- **Convicted of Certain Crimes**

Scenarios:

What laws are implicated?

Third Party Neutrals



Process for Divorce

- Summons and Petition
- (Answer)
- Initial Case Management Conference (ICMC)
- Motions
 - Motion for Temporary Relief
 - Motions Generally
- Pretrial Conference
- Trial
- Final Divorce Decree

PROCESS FOR ~ CONTESTED DISOLUTION CASES

Initial Case
Management
Conference



Alternative Dispute
Resolution?



Temporary
Hearing



Pre-Trial

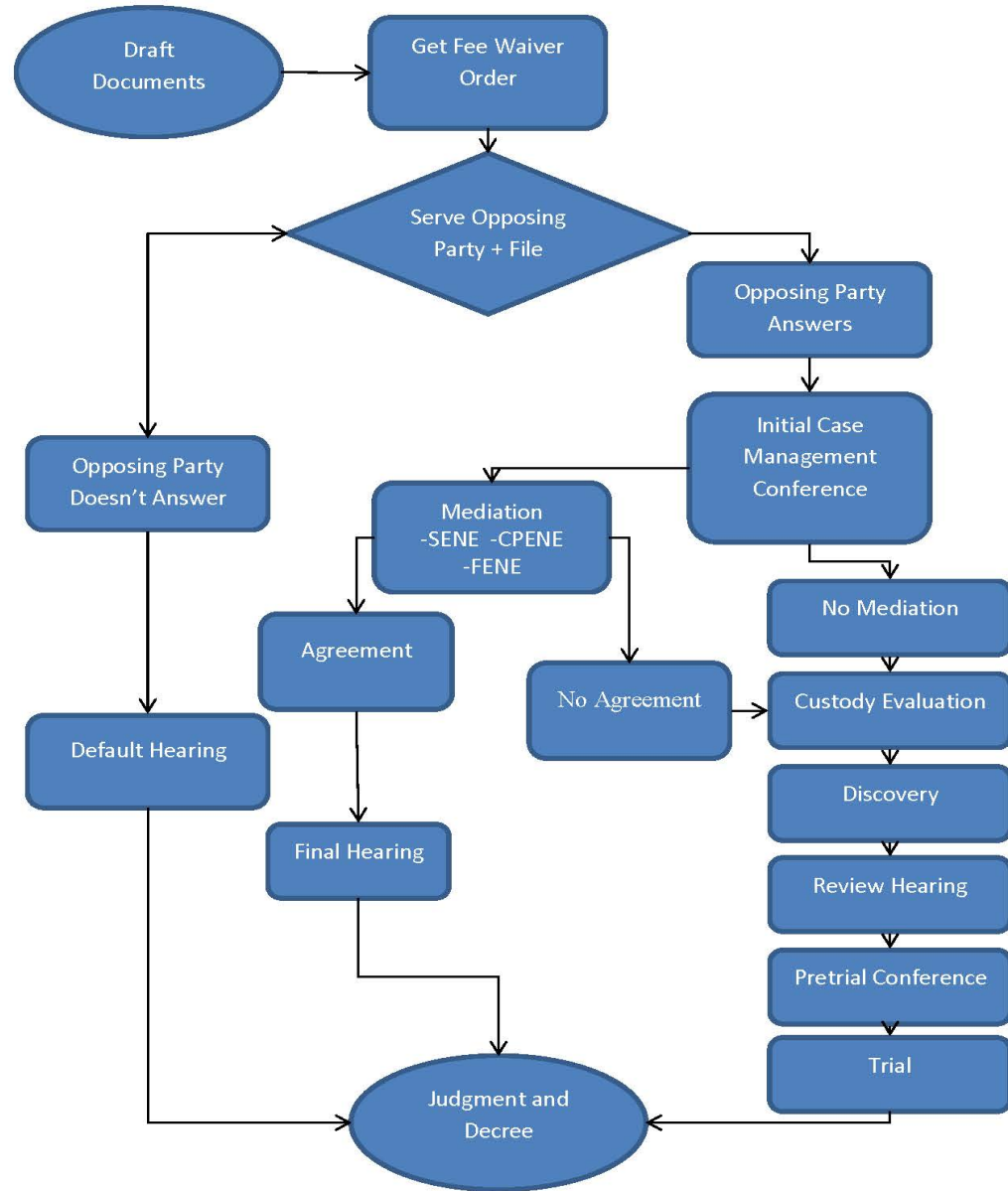


Trial

Roadmap to Divorce

WHAT DO THESE TERMS MEAN?

- **Fee Waiver (*In Forma Pauperis* Order)**- this order allows a low income individual access to the court system with discounted or waived court fees.
- **Serve Opposing Party**- Have the documents which lay out what one party wants and what they will ask the court to do served on the opposing side (DO NOT do this yourself).
- **Initial Case Management Conference (ICMC)**- The first appearance before a judge. In this proceeding the judge will request that the parties attempt to resolve their disputed issues through mediation.
- **Mediation**- This is always an optional step, and both parties must agree to it. In mediation, neutral evaluators facilitate negotiations between the parties. If the parties come to an agreement in mediation it can save a lot of time for everybody involved.
- **Custody Evaluation**- If the parties cannot agree upon custody of their children, the court may appoint a custody evaluator or a Guardian ad Litem to make recommendations as to custody and parenting time.
- **Discovery**- Discovery is the process in which each party requests documents, financial information, medical records, and other information from the other party.
- **Pretrial Conference**- At this hearing, the judge will identify any unresolved issues left to determine and schedule a trial or evidentiary hearing.



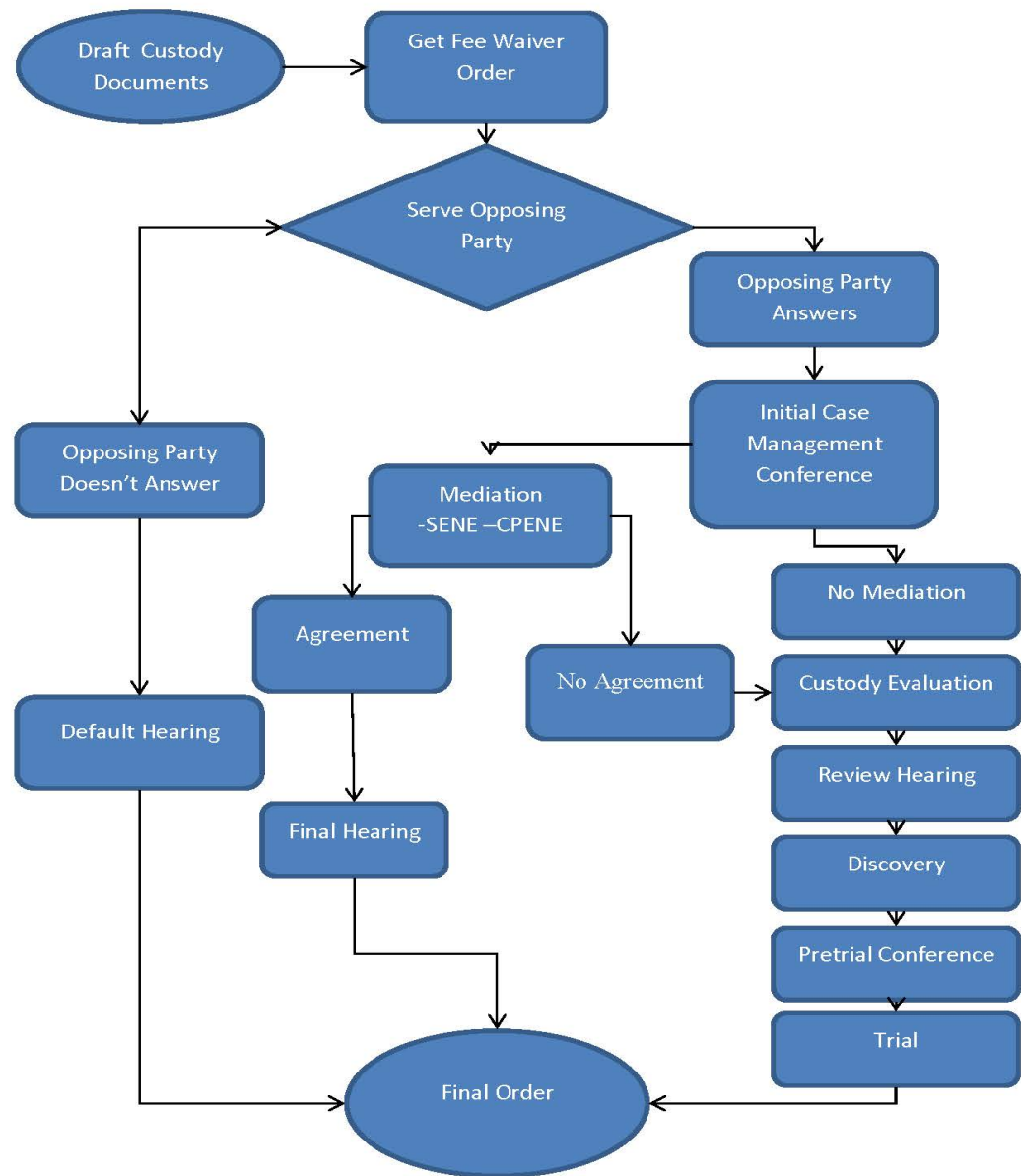
Process for Custody Cases

- Start Action
- Mediation Type Processes
- Motion Hearings
- Pretrial Hearing
- Trial
- Final Order

Roadmap to Custody

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Domestic Violence

How Keep Visible?

Documenting Domestic Violence

HOW?

OFP/HRO

Police Reports

Damaged Property

Photos

Medical Reports

Witnesses

How Domestic Violence Impacts Factors

Evidence of Domestic Violence

OFP Police Reports Medical Records Witnesses

Connection with Parenting

Issue	Relief - What you want	Relief - What he might want	Her evidence
Legal Custody	Sole legal custody to mom	Joint legal custody	Taking child to new clinic without letting mom know CLINIC RECORD
			Marriage counseling report that indicates that dad will not allow mom to be part of decisions COUNSELOR
			History of domestic violence – emphasize controlling behaviors OFP

Issue	Relief - What you want	Relief - What he might want	Her evidence
Physical Custody	Sole Physical Custody		
	Schedule Why?		

Relief

- Standard Relief
- Supervised Time
- Supervised Exchanges
- Notebook

vs.

- Tailor Relief for Situation
- What is problem?
- What is a solution?

Scenario: Tailored Relief

- What is problem?
- What are solutions?

What is Helpful to Court?

Questions?



Part III
Intersections Between OFPs &
Other Court Proceedings

Friday April 15th
10am – noon