

Custody & Parenting Time in Family Court for Advocates Part I: Overview of Family Court

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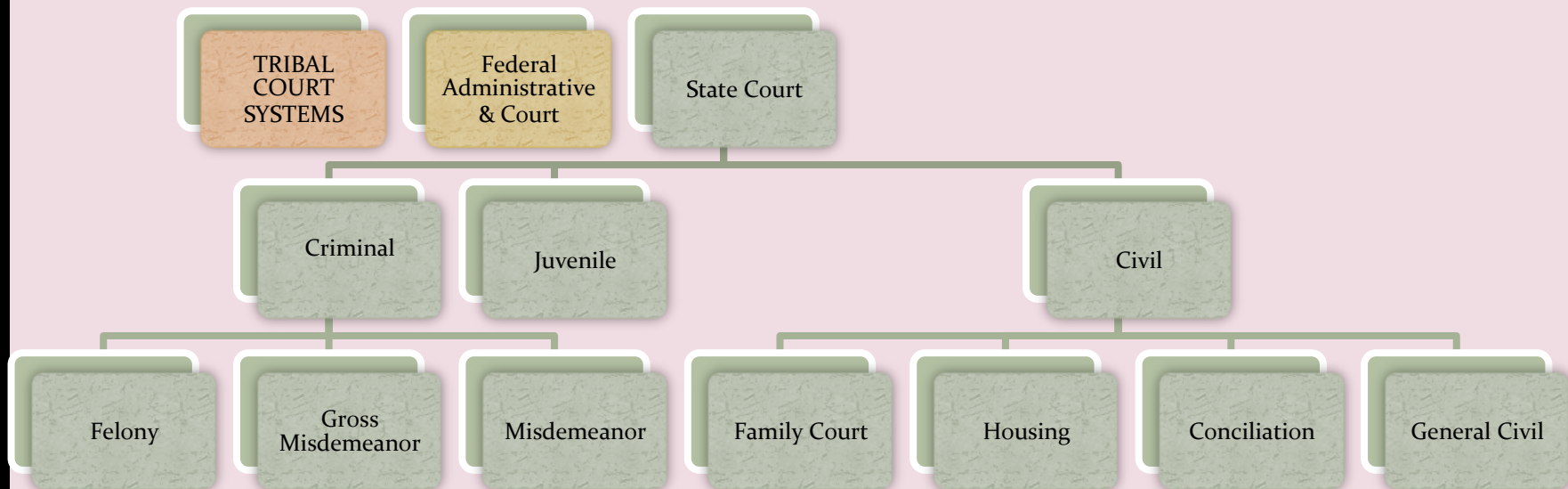
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Family Court Enhancement Project

Training for Advocates

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

Overview of the Court System



Overview of the Court System

To what court would you go?

Overview of Family Court System

WHO

Judicial Officers, Clerks, Court Reporters, Court Administration, Self-Help Staff, Family Court Services, Guardians ad Litem, County Attorney, Child Support Office, Domestic Abuse Advocates

WHAT ~ TYPES OF CASES HEARD

Dissolution (Divorce), Custody, Parenting Time, Paternity, Support, Domestic Abuse

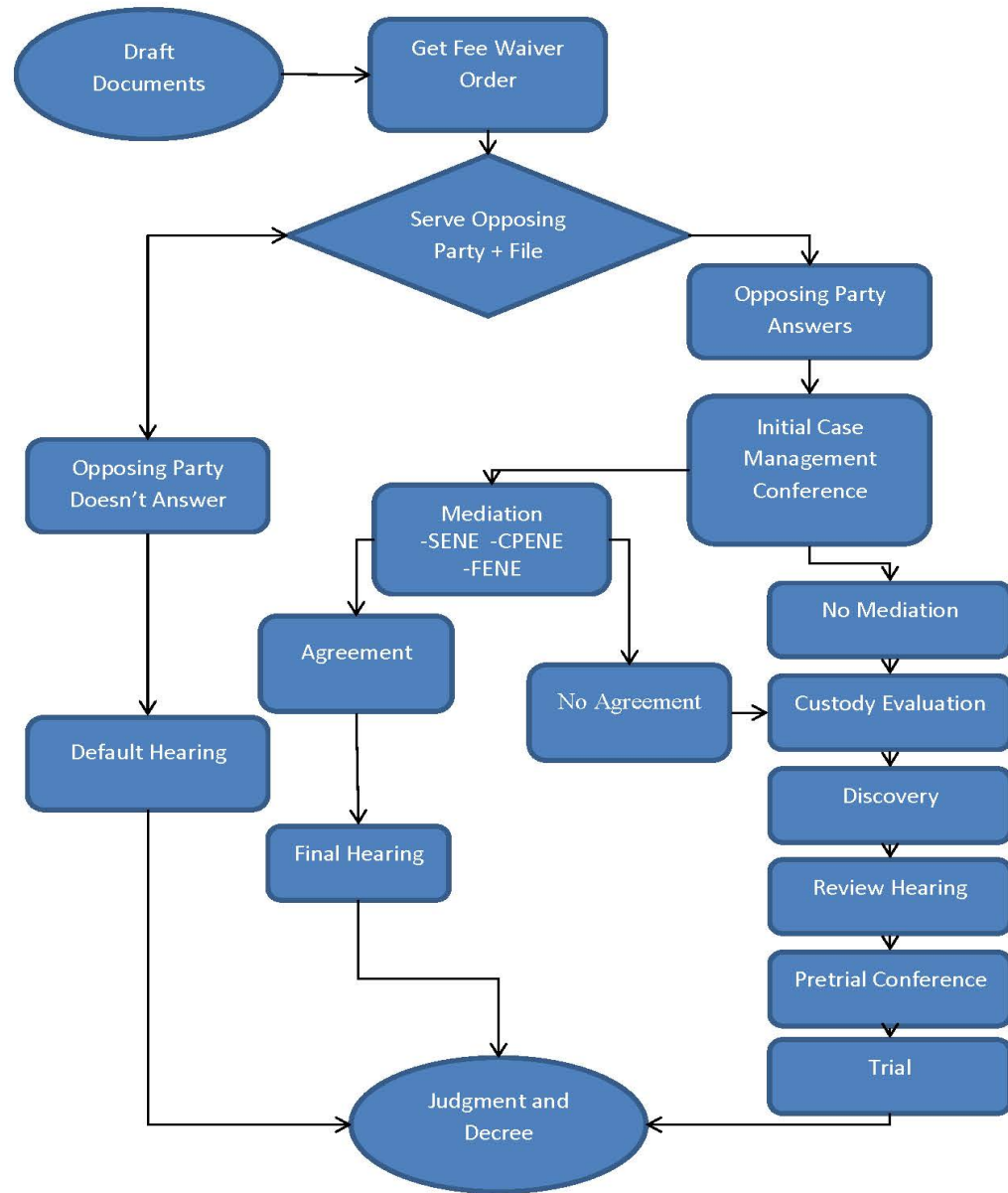
Case Statistics - 2015

- Custody: 686
- Dissolution w/ kids: 1,559
- Dissolution w/o kids: 1,989
- Domestic Abuse: 2,822
- Paternity: 940
- Support: 1,792
- Annulment: 5
- Legal Separation: 13
- Total, including Other Categories: 9,867

Roadmap to Divorce

WHAT DO THESE TERMS MEAN?

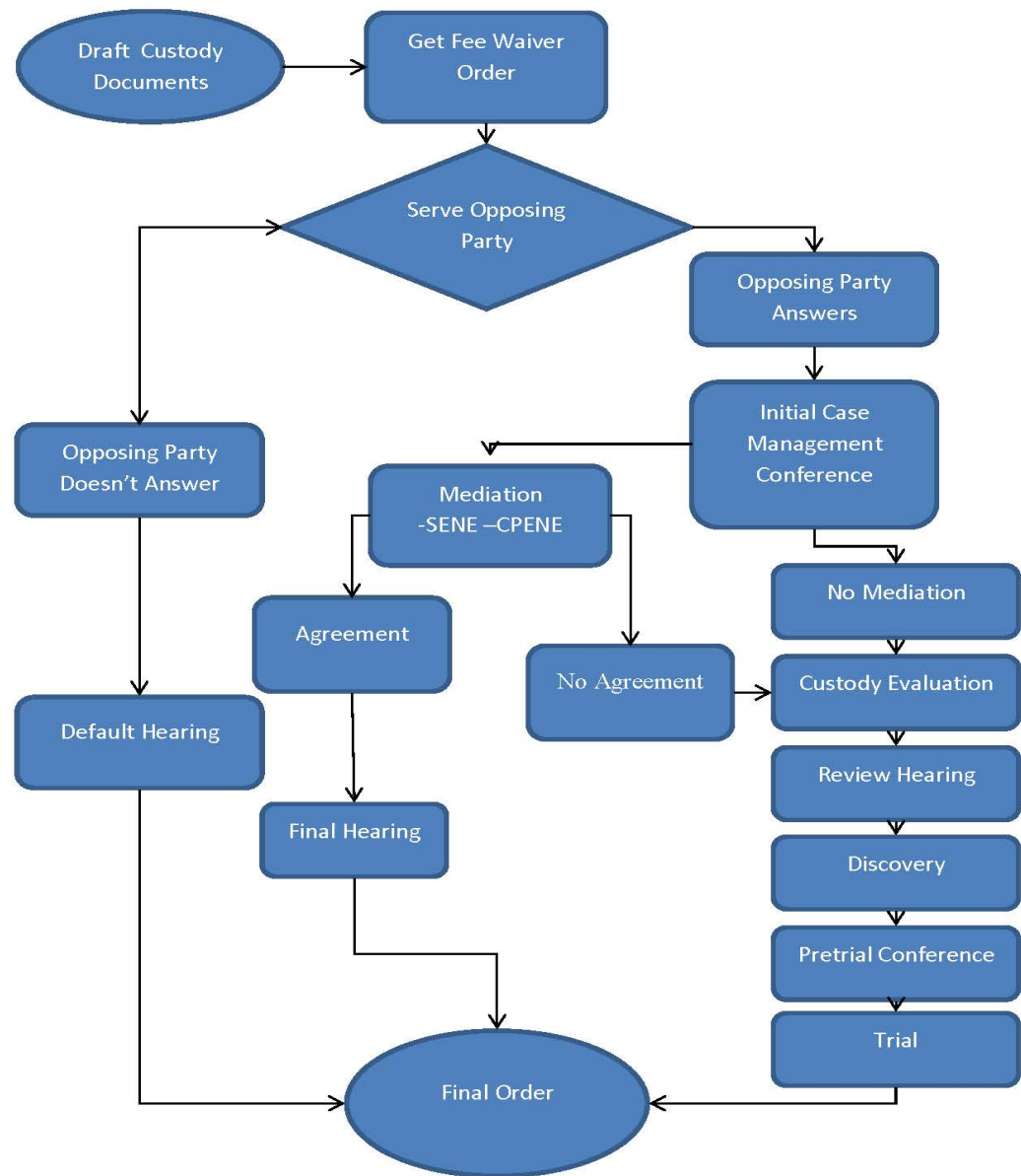
- **Fee Waiver (*In Forma Pauperis* Order)**- this order allows a low income individual access to the court system with discounted or waived court fees.
- **Serve Opposing Party**- Have the documents which lay out what one party wants and what they will ask the court to do served on the opposing side (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.



Roadmap to Custody

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Laws related to Custody and
Parenting Time

LEGAL CUSTODY

Major Decisions regarding:

- Schooling;
- Medical needs;
- Religious upbringing.

PHYSICAL CUSTODY

where a child resides

JOINT PHYSICAL CUSTODY

parenting time schedule between the two
parents

PRESUMPTIONS FOR CUSTODY

No presumption for or against joint or sole physical custody UNLESS domestic abuse has occurred.

Presumption FOR joint legal custody UNLESS domestic abuse has occurred.

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
- Effect of changes to home, school, community
- Each parent's history caring for child
- Ability to provide for the child, to maintain consistency
- Relationships with parents, siblings and other significant people

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

Modification of Custody

- Wait 1 year to modify UNLESS:
 - persistent and willful denial or interference with parenting time; or
 - child's present environment may endanger the child

Modification of Custody

change in the circumstances of the child or the parties

and

is necessary to serve the best interests of the child

Modification of Custody

- Both parties agree;
- The child has been integrated into the family of the petitioner with the consent of the other party;
- The child's present environment endangers the child's; or
- the primary custodial parent has relocated to another state despite the court's order

Domestic Abuse in Statutes

Domestic Abuse Act

- Physical harm, bodily injury or assault
- Family or household member

Domestic Abuse in Statutes

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

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

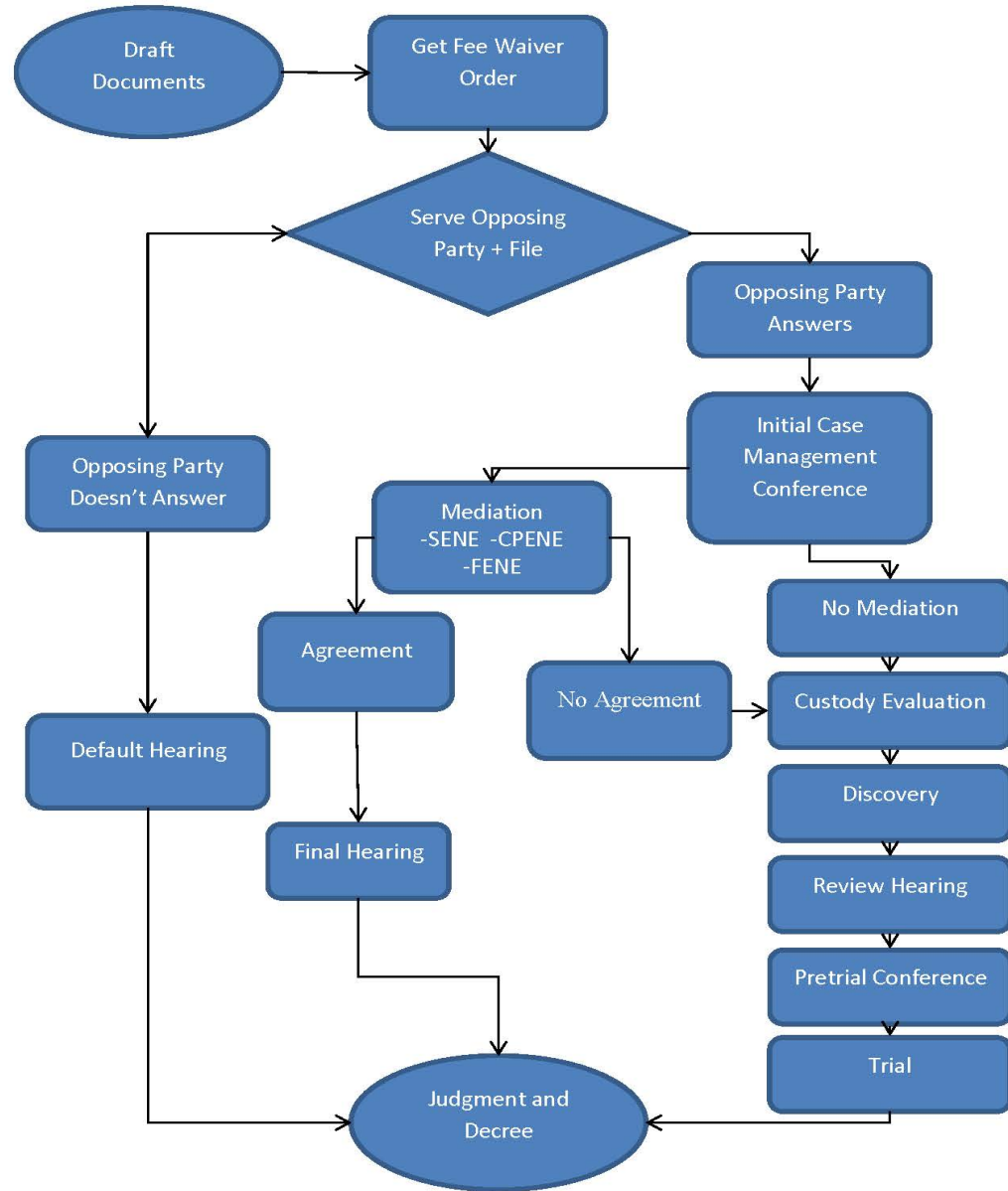


Trial

Roadmap to Divorce

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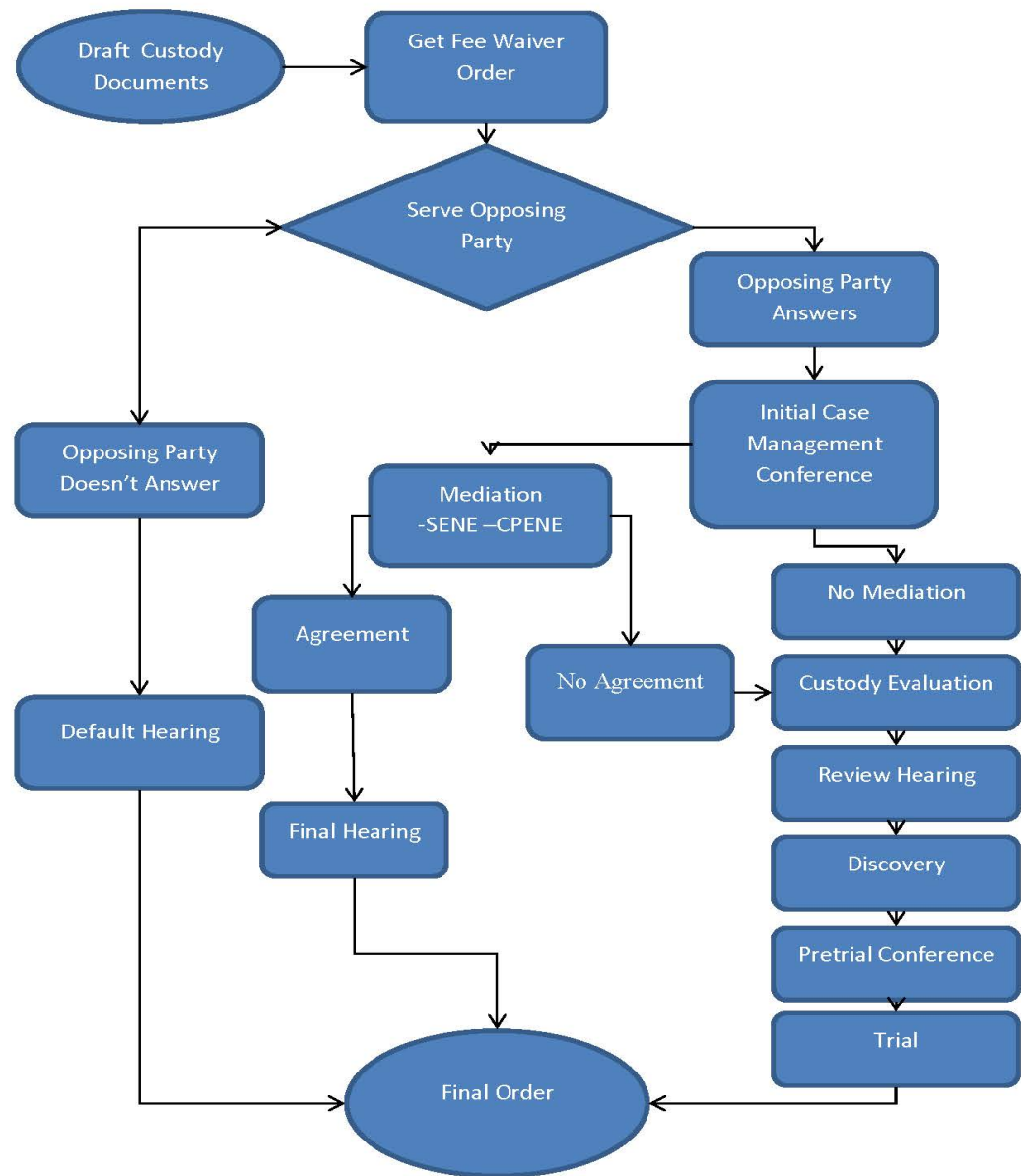
Process for Custody Cases

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

Roadmap to Custody

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How to file a motion?

Questions?

