

Child Inclusive Mediation

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One of the most misguided comments made by a parent going through a divorce proceeding is when they insist that their children must “talk to the judge.” All of us in family law know that very rarely will a judge communicate with children, and when it does happen, it is only in extreme situations. Parents typically follow up by asking “at what age can my child say where they want to live?” The recently revised best interest factors reflect the idea that consideration of children’s preference is based on more than just the age of a child; one must also consider whether a child has the ability and maturity to express his or her independent and reliable preference. Children’s lives are significantly impacted when their parents go through a divorce, and some children have the ability to express their thoughts and ideas and want to have a voice.

There are different mechanisms for having a child provide his or her input into this process. One common way is through a custody evaluation, but there are significant downsides to this process. Although custody evaluations are a necessary process for some cases, parents often do not understand the time, cost, and emotional drain on the family. One job of the custody evaluator is to identify the weaknesses of each parent, and the damage done from this can often not be repaired. It is important for attorneys to explain to their clients all of these factors when determining whether a custody evaluation is right for a specific case.

Another option is including children in the mediation process. This allows parents to create a parenting plan that reflect the wishes of their children. The challenge with this, of course, is how to hear from children and not defer adult decision-making responsibility on to them. How do parents include the children in the process safely? Certainly, it is not safe to bring a child into a mediation session where they can watch their parents argue about the details of the plan, or where they might be asked to express their opinions and preferences in front of their parents. We can easily imagine the pressure that would be placed on a child in that situation, as they attempt to diplomatically express themselves in a way that does not hurt or betray either parent and simultaneously accurately represent their own thoughts and feelings. This clearly is much too hazardous for children, and is unlikely to lead to an outcome that best fits the child. Parents need a process that gives them space to think like adults, where they can integrate their children’s comments and preferences with their own wisdom about what will be best for children, even if it is not preferred by the children.

For this reason, a process was developed that invites children into the mediation process without them entering the mediation session. The process of Child Inclusive Mediation (CIM) utilizes a Child Consultant who is a trained mental health professional skilled at interviewing children. The Child Consultant interviews the children in advance of the mediation session. In this interview, the child can be provided with information about the divorce process such as what to expect and how decisions are made. The child is also given the opportunity to express their feelings and experiences in relationship with each parent; experiences in each parent’s care; and considerations they wish their parents to make to address their needs. This process provides a

safe haven for children's voices to be heard while they remain outside the conflict of the divorce proceeding.

Why include children in the mediation process?

Research has revealed that in the midst of divorce, many parents do not inform their children about what is occurring in the family. They do not speak to their children about what the process will be like for them; what changes will occur and when; and what will become of the family. Parents do not know what to say, what the outcomes will be when the chaos and disruption come to an end, and they do not want to engage their children in their conflicts. Children are then left to their own devices to decode what is occurring around them and to figure out what is happening.

Even when children are well informed by their parents about what is occurring, the question remains of how to allow children to express their thoughts and feelings about the changes in the family and how to include their opinions about potential outcomes.

I note that the role of Child Consultant is not merely to interview the children about their preferences or find out what they want. This is often counter productive, as it engages the child in the conflict by asking them to vote on their parent's positions or simply create their own position. The skillful Child Consultant seeks to elicit the child's voice and their descriptions of issues they need addressed without placing pressure on the child by conveying that they are responsible for making a choice about what should occur. The burden of responsibility must always remain with the parents. Even though, in the moment, a child may want to be in charge of making the choices, they are not able to recognize the potential consequence of feeling responsible for the family's outcomes.

The CIM Process.

Child Inclusive Mediation utilizes two professionals: a Mediator and a Child Consultant. The Child Consultant begins the process by meeting with each parent, interviewing them about the topics to be raised in the mediation process and gathering background on the family's situation. An important component of these interviews is to gain a bit of information about how each parent can best hear feedback from the child consultant, as they will do in the mediation session.

The Child Consultant then meets with the child or children. The children are ideally interviewed twice, brought once by each parent, so that the Child Consultant can detect any differences in presentation varying with who drove them to the appointment. In families with multiple children, the siblings may be together briefly, but individual time is provided for each child's interview. At the outset, the Child Consultant explains the purpose of the interview and assures the child that they can indicate what elements of their remarks get shared with the parents. The child is then interviewed in age-appropriate ways about their experiences in the family, their knowledge about what is occurring in the family changes, and things that make it easy or difficult to transition between the parents. These interviews may be purely verbal with older children and may include drawings, play therapy techniques, or visual methods such as

“feelings cards” to help kids express their emotions about their experiences and concerns for their future.

Once these interviews are complete, the Child Consultant synthesizes their feedback seeking the best way to convey what the children need the parents to address in a manner that the parents can best hear this feedback. The Child Consultant then joins the mediator, the parents, and both attorneys in the mediation session. This session typically begins with the Child Consultant sharing the feedback they have prepared. The Child Consultant and Mediator then co-facilitate the mediation session. Having the Child Consultant present to continually be anchoring the parents in the perspective of the children frees the Mediator from the role of advising parents about child-focused outcomes, allowing the Mediator to be solely focused on guiding the mediation process. The Mediator and Child Consultant strive to keep the parties in a parental frame of mind, rather than having them adopt a litigant frame of mind. In this way, the parents maintain their ability to reflect on the needs of their kids and integrate their care and compassion for their children in their decision-making.

For whom is Child Inclusive Mediation most useful?

When considering Child Inclusive Mediation, it is important to determine whether or not the parties and the children are good candidates for this process. Because both parents are likely to hear positive and negative comments from their children through the Child Consultant, they need to be open to hearing the feedback, use it as a tool moving forward, and have the self-discipline to not take the information back to the children.

The best candidates for CIM are families with school-aged children and parents who have a strong reflective capacity. These parents are able to see their children as separate individuals with their own thoughts and feelings, even if these are different from their own. They are also able to advocate for their own needs in the process, while also making space for the fact that each of their children has their own needs about which they are willing to learn.

Many parents who are hesitant to enter this process find themselves pleasantly surprised to come to agreements and see a positive path going forward. The parent who believes there is no hope for resolution often finds Child Inclusive Mediation not only successful, but they can see the light at the end of the tunnel for themselves and their children. The new life after divorce now is seen as a new opportunity for themselves and their children.

A study conducted by McIntosh, Wells, Smyth & Long (*Child-Focused & Child-Inclusive Divorce Mediation: Comparative Outcomes from a Prospective Study of Postseparation Adjustment; FAMILY COURT REVIEW, Vol. 46 No. 1, January 2008 105–124*) compared CIM with traditional mediation that did not include the children meeting with a Child Consultant. It found that parents’ satisfaction with CIM was significantly higher and the results were more long-lasting, both in creating agreements that are enduring and in reducing the parents’ future litigation over the duration of their children’s minority.

However, there are some families who are not a good fit for the CIM process. Parents who suffer from significant personality disorders, such as narcissistic personality disorder, may

have difficulty making this process productive for the benefit of the children. Parents who may be successful in other areas of their lives, but who struggle with the emotional capacity to be open to the needs of their children, who cannot see that their children are independent from themselves, and who are not responsive to constructive criticism regarding their parenting are not the best candidates for the CIM process. Parents with this tendency often use their children against the other parent, seeing kids as a tool for meeting their own needs rather than individuals with needs of their own. For such a parent who lacks reflective capacity, they may go into the mediation believing they already know what the children have said to the Child Consultant and expect to be vindicated, and if the Child Consultant reports something different than what they expect, they may shut down and be unwilling to accept the feedback. Such a parent may also confront the children after the mediation process, criticizing what the child said to the Child Consultant or trying to get the child to “correct” their remarks. The goal for these parents is their own best interests and not that of their children. For families with a parent with this personality, the process of Child Inclusive Mediation may not be as successful.

The resource that Child Inclusive Mediation provides is a safe place for parents and children to speak openly about what is happening during the divorce process. Allowing this open communication gives all family members the opportunity to be heard and considered in resolving the most important issue of any divorce, the well-being of the children.



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