

Can Parents Handle the Truth? A Primer on Child-Inclusive Mediation

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A common misconception in family law cases is that children are equipped to make custody and parenting time decisions. All too often parents and their lawyers involve children in litigation, claiming the “child’s voice” must be heard. Whether it is asking children to testify in court or filing unsolicited “letters from the child,” these attempts often backfire and ultimately are a disservice to the child. If parents truly desire to have the child’s voice inform the process, an effective tool is child-inclusive mediation (“CIM”).

What is Child Inclusive Mediation?

CIM is a form of alternative dispute resolution (“ADR”) where the child’s experience takes center stage. CIM requires the help of two professionals — a mediator and a child consultant — who work in tandem.

For parents considering CIM, a word of caution. Parents must be prepared to hear the truth about their child’s experience, which may be uncomfortable and differ from their own.

Mediator-Extraordinaire

CIM mediators are highly trained and familiar with family law processes. It is the mediator’s role to receive preliminary information about the family, synthesize the issues to center the child’s experience, guide the discussion, and empower parents to reach agreements.

"The Child Whisperer"

Child consultants are typically experienced child therapists or have similar credentials to effectively interview children. They use age-appropriate communication tools to elicit candid responses from children on various topics, including stressors in their life and how they perceive their parents’ relationship and conflict. The child consultant meets with each child separately from the parents and mediator.

The Mediation Process

At mediation, the child consultant voices each child's experience to the parents and mediator. In most cases, children do not participate in mediation. The parents are then given time to digest the information from the child consultant before mediating issues.

Parents who expected different feedback must be prepared to acknowledge a difficult truth — that their positions in mediation or litigation may not align with the children's perspectives. It is up to the parents to prioritize the children's needs and find solutions in their best interests.

Assessing Family Readiness

Parents should consider the following factors before utilizing CIM:

- **The "Why."** CIM is not a process for parents with self-serving or vindictive motivations. Instead, CIM is for parents who want honest feedback about their children's experiences and have the ability to use that information in a productive, solution-focused manner.
- **Age of child.** There is no bright-line rule on how old is "old enough" for a child to participate in CIM. Pairing a child with the right child consultant (e.g., a play therapist for a younger child) is equally important when assessing a child's age and readiness for CIM.
- **Costs.** Many CIM providers charge flat fees, hourly rates, or both. Unlike traditional mediation with one mediator, parents are paying for two professionals.
- **Other factors.** Some cases may not be a good fit for CIM, including cases where a child is resisting or refusing to see one parent and cases with a history of family violence, unless certain safety precautions are taken.

Conclusion

For parents who believe "ignorance is bliss," CIM may not be the best option. CIM is not about reinforcing parents' firmly held beliefs about their children. Instead, CIM is an opportunity to give children a voice in a safe, therapeutic environment and empower parents to create child-centered solutions.

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Practice Areas

Family Law