

TEMPLATE LETTER:

Explaining 2019 changes to Family Code Section 3044 to Mediators

Under Family Code section 3044, a parent who committed abuse in the past five years cannot be awarded sole or joint custody of the child(ren) unless the person proves that certain requirements are met. You can learn more about Family Code section 3044 and these requirements in FVAP's resources here [Know Your Rights: Family Code section 3044](#).

As an advocate, you may be working with a survivor who is involved with mediation through Family Court Services. FVAP made this template letter that you can give to Family Court Services. The letter explains Family Code section 3044 and that courts cannot award sole custody to a survivor but then order 50/50 custody without the requiring the parent who is abusive to prove that they have met certain requirements.

This packet includes a template letter that can be filled out electronically and template letters that can be printed and filled out by hand.

If you use the electronic template, place your cursor and click your mouse at each area where you see brackets (“[]”). You will then see three dots appear on the left. Click the box with the three dots and the bracketed area will become highlighted. You should then type in the requested information. You will only be able to change the parts of the template that are in brackets.

Note: For the date, place your cursor on the date. You will notice that a box will appear and there will be an arrow to the right of the box. Click on this arrow and a calendar will appear. Select the date that you are writing the letter.

When using the template letter that can be printed and filled out by hand, you should use the electronic template as a guide to know what information can be used to fill in the blank lines.

When using either the electronic or printed template, ***date and sign the letter and keep a copy of the completed letter for your records***. If you do not have access to a copier, take a picture of the final document before giving it to the mediator or Family Court Services.

How do I get more assistance? Contact FVAP at info@fvaplaw.org or (510) 380-6243 for questions.

November 21, 2023

[Type Mediators Name]
[Type Mediator's Address]

Dear [Mediator's Name],

I am writing on behalf of my organization, [Organization Name], in hopes of addressing a common issue that arises in mediation with my clients. I am truly grateful to be able to have the relationship with Family Court Services that we have, and I hope that we can work together to address this concern.

It has come to our attention that for litigants who are survivors of domestic abuse, some recommendations include custody and visitation schedules that are not compliant with Family Code section 3044 and with case law.

Family Code section 3044 creates a rebuttable presumption that it is not in the best interests of a child to be in the custody of a parent who has been found to have committed domestic abuse against the other parent, child, child's siblings, their own parent, current spouse, cohabitant, or a person in a dating or engagement relationship. A court cannot award joint or sole legal or physical custody to a parent who has committed domestic abuse in the past five years unless that parent has demonstrated that he or she can overcome the presumption.

In *Celia S. v. Hugo H.* (2016) 3 Cal.App.5th 655, the trial court granted a restraining order and applied Family Code section 3044, granting sole legal and physical custody to the parent who was the victim of domestic violence; however, the trial court also awarded a 50/50 visitation schedule between the parties. The court of appeal reversed that decision, holding that such a schedule was really a joint physical custody award, and that the other parent had to rebut the presumption before the court could make that schedule. It can also be joint custody when a sole custody award is entered in name only because the child frequently shuttles between both parents, and has such significant contact with both parents, that the reality is both parents are exercising custody of the child. (See *City and Co. of San Francisco v. H.H.* (2022) 76 Cal.App.5th 521.)

California courts have acknowledged the important role that Family Court services play in crafting recommendations and their responsibility in following Family Code section 3044: "It is critical that ... FCS report[er]s be aware of the provisions of Family Code section 3044, and in particular, the mandatory presumption, and in

making recommendations to the court, should, at a minimum, acknowledge that the court may be required to consider whether the presumption has been triggered in cases involving allegations of domestic violence.” (*In re Marriage of Fajota* (2014) 230 Cal.App.4th 1487, 1500, fn. 9.) In California, domestic violence, also called domestic abuse, has been broadly defined, and includes causing physical harm to someone, sexually assaulting someone, or making someone afraid that they would be hurt or that someone else would be hurt. (Fam. Code § 6203, subd. (a).) However, abuse is not limited to physical injuries. (Fam. Code § 6203, subd. (b).) Other behaviors that can be abuse include molesting someone, threats, impersonating someone (under Penal Code sections 528.5 and 529), making telephone calls, including annoying telephone calls under Penal Code section 653m, destroying personal property, or disturbing someone’s peace, including coercive control. (Fam. Code § 6320, subd. (a),(c).)

We would encourage Family Court Services mediators to keep this in mind as you provide the valuable service of making custody recommendations in family courts.

I hope that by highlighting this issue we can work together to ensure that recommendations comply with the law when domestic abuse is at issue. Please feel free to contact me at [Your Telephone Number] to discuss this issue in more depth.

Thank you for your time and for your difficult and important work.

Sincerely,

[Your Name]

Dear _____,

I am writing on behalf of my organization, _____, in hopes of addressing a common issue that arises in mediation with my clients. I am truly grateful to be able to have the relationship with Family Court Services that we have, and I hope that we can work together to address this concern.

It has come to our attention that for litigants who are survivors of domestic abuse, some recommendations include custody and visitation schedules that are not compliant with Family Code section 3044 and with case law.

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