

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

In re the Marriage of)	Case No. 1-9-FL
)	FCS No.
Petitioner:)	
)	STIPULATION AND ORDER
and)	APPOINTING SPECIAL MASTER
)	
Respondent:)	APJ:
_____)		

Petitioner and Respondent, together with their respective attorneys of record, agree and ask the Court to appoint a Special Master in the above-entitled matter, as follows:

A. APPOINTMENT AND AUTHORITY

1. *Name, located at *address, phone number *phone number, including area code, is appointed Special Master under Code of Civil Procedure §638 until resignation, written agreement of the parties, further Court Order, or *either a specific term (i.e., 36 months) or specific date (i.e., January 1, 2003), whichever first occurs. This appointment is based upon the expertise of the Special Master.

2. Special Master shall have authority to make decisions regarding the best interest of the child(ren) on the issues set forth below and indicated by the initials of the parties. It is understood by the parties that such decisions are not subject to review by the Court and in the event either party objects to the decision of the Special Master, he or she may request a hearing de novo on that issue.

The Special Master may make the following types of orders in accordance with applicable constitutional and case law:

___/___ Permanent change in responsibility for making a decision, i.e. one parent will have the power to make a decision over an issue; both parents must agree on an issue before action can be taken.

___/___ Temporary change in responsibility for making a decision, i.e. one parent will have the short-term power to make a decision over an issue; or both parents must agree on an issue before action can be taken.

___/___ Permanent change in custody sharing schedule (without limit on the change in the time share or with a limit on how much the time share percentage can change, i.e.: "provided that such change does not modify the then current percentage of time sharing by more than 10%").

___/___ Temporary change in custody share schedule.

___/___ Permanent change in telephone contact.

___/___ Temporary change in telephone contact.

___/___ Permanent change in custody condition, i.e. no smoking, no firearms, no consumption of alcohol, home facilities such as number of bedrooms or sleeping arrangements, etc.

___/___ Temporary change in custody condition, i.e. no smoking, no firearms, no consumption of alcohol, home facilities such as number of bedrooms or sleeping arrangements, etc..

___/___ Child care requirements.

___/___ Exchange and/or transportation of the child(ren), including specifying time and place of exchange.

___/___ Ordering and changing education, daycare, and/or extra-curricular activities for the child(ren).

___/___ Making and changing orders regarding the alteration of the child(ren)'s appearance, such as haircuts, pierced ears, body piercing, tattoos.

___/___ Ordering either or both parents to substance abuse testing and having access to any generated reports or results.

___/___ Making orders more specific or clarifying existing orders so as to help the parties to avoid violation.

___/___ Changing the times for religious observances and training by the child(ren).

___/___ Determining and ordering appropriate medical, mental health, and counseling treatment (including psychotherapy) for the child(ren); the Special Master shall designate whether any ordered counseling is or is not confidential;

___/___ Determining and ordering substance abuse treatment or counseling, domestic violence counseling, attendance at batterer's intervention programs, or parenting classes for the parents; the Special Master shall designate whether any ordered counseling is or is not confidential.

___/___ Ordering psychological testing for either or both parents or the child(ren).

___/___ Other:

3. In an emergency, the Special Master may assist a party in obtaining an Emergency Protective Order through law enforcement and the Court.

4. The Special Master may recommend that a party seek an Emergency Screening through the Court.

5. The Special Master may recommend to one or both parties that a custody evaluation or assessment be conducted.

B. QUASI-JUDICIAL IMMUNITY

1. The Special Master is an Officer of the Court, acting as a private judge for the parties to this action, to the extent of this Stipulation. The Special Master has quasi-judicial immunity. The Special Master cannot be

sued based on his/her actions in this matter. The Special Master cannot be compelled to testify and is subject to the restrictions of Evidence Code §703.5.

2. The Special Master may not testify without the express agreement of the Special Master and the parties.

3. Notwithstanding the above, the Special Master may elect to testify in any hearing to remove the Special Master, in any request of the Special Master to the Court to terminate the appointment, or to enforce fee collection.

C. PROCEDURE

1. Statement of Policies and Procedures: The Special Master shall provide the parties with a written agreement for services containing his or her policies, including specifically the policy concerning confidentiality of information obtained by the Special Master, and the procedures used by the Special Master for dispute resolution. In the event the Special Master's policy is to receive and maintain confidential information, either party may later request removal of the Special Master on this basis, to be considered by the Court in a good cause request.

2. Process: Both parties shall participate in the dispute resolution processes defined by the Special Master in accordance with principles of due process, which shall include at a minimum the opportunity for each of the parties to be heard. Each of the parties shall be present when so requested by the Special Master. In the event a party does not attend a meeting set by the Special Master, the Special Master may make orders despite the party's absence.

3. Hearings: The Special Master may conduct hearings either with the parties appearing personally or by telephone. Conference calls are encouraged. If either party wants an issue decided by the Special Master, he or she may submit a written or telephonic request to the Special Master, as directed by the Special Master, clearly setting forth the issues in dispute. The hearings may be informal and need not comply with the rules of hearsay or civil procedure. The testimony need not be sworn. There is no confidentiality as to any evidence presented at such hearings. If either party desires a record of the proceedings, on notice to the Special Master and the other party, he or she may, as may the Special Master, audiotape the proceedings or he or she may pay for a certified court reporter. Absent an emergency, the Special Master shall give the parties 10 days notice of such hearings. Either party may request an alternative date or time, which will be granted or denied based upon good cause shown.

4. Interviews: The Special Master may talk with and base orders or recommendations upon conversations with parties, attorneys, witnesses, or examinations of writings which take place without anyone but the Special Master. No record need be made. The Special Master may talk with each party and without the presence of either counsel. The Special Master shall have the authority to determine the protocol of all interviews, including the power to determine who attends such meetings.

5. Decisions: The Special Master must decide issues submitted within 30 days from the submission of all applicable evidence.

6. Child Abuse. Notwithstanding any written policy of the Special Master, there is no confidentiality concerning communications with the Special Master regarding child abuse. Incidents of child abuse or suspected child abuse that meet the mandatory reporting standards for mental health professionals will be reported by the Special Master to appropriate authorities.

7. Use of Assistants/Consultants: On reasonable notice to the parties, the Special Master may utilize consultants and/or assistants as necessary to aid the Special Master in the performance of the duties contained herein. Fees for such consultants or assistants will be advanced by the parties as directed by the Special Master. In making such directions, the Special Master will consider the financial circumstances of the parties. In the event

of a dispute regarding the allocation of such fees, the Court retains jurisdiction to resolve the dispute.

D. Orders of the Special Master

1. Orders made by the Special Master, if in writing, shall be binding and effective when signed by the Special Master. Orders need not be in writing and may be made orally, if circumstances involving severe time constraints and/or possible emergencies so warrant. Oral orders shall be binding and effective when made in a fashion communicated to both parties, and such orders shall be further confirmed in writing to both parties and counsel as soon as practicable.

2. The Special Master will issue a written Statement of Decision, setting forth the reasons for an order or recommendation, if requested by either party within 5 days of the issuance of the order or recommendation. The Special Master may issue a Statement of Decision with any order or recommendation.

3. In the event a party objects to an order by the Special Master, that party may file a motion with the Court to change or modify the order. The order shall remain in effect until changed by the Court. The Court will make an independent determination following a de novo hearing during which the Court will take evidence and make a decision based upon the best interests of the child(ren).

Prior to the schedule hearing on such motion, the parties and counsel, if requested by the parties, shall meet and confer with the Special Master to attempt to resolve the objections. In the event that the issues are resolved, a written stipulation shall be prepared by the Special Master or counsel and submitted to the Court prior to the hearing. Such stipulation shall modify the prior order of the Special Master, in whole or in part, as set forth in the stipulation.

4. Copies of all motions, objections, or other documents submitted to the Court or issued by the Court shall be served in accordance with CCP§1005 on all parties, counsel and the Special Master by the person or entity generating such documents.

E. COMMUNICATION WITH SPECIAL MASTER

1. The parties and their attorneys shall have the right to initiate or receive ex-parte communication with the Special Master. Provided, however, ex-parte communications should be minimized whenever possible and the Special Master shall have the right to disclose all ex-parte communications. If the Special Master is requested to make orders based upon an ex-parte communication, he or she shall make reasonable efforts to contact the other party before making such orders and, if required, to schedule a hearing in accordance with Paragraph 3 above. A party or witness who initiates contact in writing with the Special Master, must provide copies to all parties, simultaneously.

2. The Special Master may not communicate ex-parte with the Judge, provided, however, that the Special Master may communicate in writing to the Judge, so long as copies are sent to the parties and their counsel.

3. Counsel for _ Petitioner/Plaintiff _ Respondent/Defendant shall provide, within 15 calendar days of the date this order is mailed, copies of all:

 _ Pleadings
 _ Orders and correspondence between counsel or the Court and counsel related to the action

F. DATA COLLECTION

The parties have been informed that they are not required to give up privileges or rights to privacy, and they do not have to agree to disclose information. However, they agree that records and information regarding either

party and/or the child(ren) may be released to the Special Master by the following:

1. Child(ren)'s current/previous pediatrician;
2. Child(ren)'s current/previous psychologist/psychiatrist or mental health professional;
3. Child(ren)'s current/previous teacher(s) and schools;
4. Hospital and medical records of child(ren)'s current/previous physician;
5. Law enforcement agencies, police department/sheriff's office;
6. Prior Special Master;
7. Custody Evaluator;
8. Daycare providers;
9. Other:

The parties will sign the consent to release of the above-listed information form(s) provided to them by the Special Master. In addition, the parties shall provide non-privileged documents to the Special Master on request.

G. FEES

1. Charges and Costs: The Special Master's hourly fee shall be set by the Special Master pursuant to an agreement between the parties and the Special Master. Said fees shall not exceed \$ ____ per hour. It is understood that despite the fact that the Special Master may make decisions or orders in favor of one party, both parties will continue to be responsible for the payment of fees associated with such services at the allocated percentage designated in Section H below. Ultimately, the Court shall determine the proper allocation between the parties of the fees of the Special Master for such services and may require reimbursement by one party to the other for any payment to the Special Master.

The Special Master shall be reimbursed for any reasonable expense he/she incurs in association with his/her role as Special Master. These costs may include, but are not limited to, the following: photocopies, messenger service, long distance telephone charges, express and/or certified mail costs and excess postage to foreign countries, parking, tolls, mileage and travel expenses, and word processing at a rate of \$____ per hour.

In the event that either party fails to provide twenty-four (24) hours notice of cancellation of any appointment with the Special Master, such a party shall pay all of the Special Master's charges of such missed appointment at the full hourly rate, at the discretion of the Special Master.

Telephone calls to the Special Master by either party are part of the process and appropriately paid for by the parties according to their percentage share as ordered, unless otherwise determined by the Special Master.

2. Payments: Prior to the initial interview, the parties will provide the Special Master with an advance retainer totaling \$____, \$____ from each party. The aforementioned hourly fees and costs as set forth above shall be drawn against this retainer. Any funds remaining at the termination of the Special Master's services shall be refunded to the parties. In the event the retainer is expended prior to the termination of the Special Master's services, the parties agree to provide a like amount as and for an additional advance retainer within 15 day of the request. The Special Master shall not become a creditor of the parties.

3. Objections to Fees or Costs: Any objection to the Special Master's bills must be brought to his/her attention in written form within 30 business days of the billing date, otherwise the billing shall be deemed accepted.

4. Enforcement: In the event that a legal action becomes necessary to enforce any provision of this order, the non-prevailing party shall

pay actual and reasonable attorney's fees and costs as may be incurred. The Special Master may proceed by noticed motion to the Court in the event his/her fees are not timely paid. A willful failure to advance an initial or later retainer within 15 days of a demand therefore may be the subject of monetary or issue sanctions or a contempt action.

H. ALLOCATIONS

Except as otherwise provided herein, the fees of the Special Master shall be shared by the parties in the following manner:

Father shall pay ____% of the Special Master's fees, expenses and advance deposit; and

Mother shall pay ____% of the Special Master's fees, expenses and advance deposit.

The Special Master shall have the right to recommend the reallocation of payment of his/her fees at a percentage different from the above if he/she believes the need for his/her services is attributable to the conduct of one party or if changed financial circumstances of one party or both parties warrant it.

I. RENEWAL, WITHDRAWAL, REMOVAL, GRIEVANCES

1. Renewal of Term of Appointment: The parties and the Special Master may agree to renew or extend the term of the Special Master by written stipulation and order.

2. Withdrawal of the Special Master: The Special Master may, on notice to all parties and counsel, ask that the Court remove him or her as Special Master. Such request shall set forth the reason for such request.

3. Removal of the Special Master: The Special Master can be removed or replaced at any time by written stipulation and order signed by all parties. In the event the parties do not agree to remove the Special Master, either party may request the removal of the Special Master by noticed motion on any of the grounds applicable to the removal of a Judge, Referee, or Arbitrator, or on showing of good cause in the event it is the written policy of the Special Master to receive or maintain confidential information. Such motion shall proceed on the written documents submitted by both parties and the Special Master, unless the Court orders an evidentiary hearing. Each party and the Special Master may respond to the initial submissions in writing.

4. Grievances: Any complaints or grievances from either party regarding the performance or actions of the Special Master shall be dealt with according to the following procedure:

(a) A person having a complaint or grievance regarding the Special Master must discuss the matter with the Special Master in person before pursuing it in any other manner.

(b) If, after discussion, the party decides to pursue a complaint, he/she must then submit a written letter detailing the complaint or grievance to the Special Master, to the other party, to both parties' attorneys (if any), and to the attorney for the child(ren), if one exists. The Special Master will within 30 days provide a written response to the grievance to both parties, both attorneys, and the attorney for the child(ren).

(c) If appropriate, given the circumstances, the Special Master will then meet with the parties and their attorneys (if any), to discuss the matter.

(d) If the grievance or complaint is not resolved after this meeting, the complaining party may proceed by noticed motion to the Court for removal of Special Master as specified above.

(e) The Court shall reserve jurisdiction to determine if either or both parties' and/or the Special Master shall ultimately be responsible for any portions or all of said Special Master's time and costs spent in responding to the grievance and the Special Master's attorney's fees, if any.

J. WAIVER OF RULE OF COURT 244.1

Both parties agree that the Special Master shall be advised of the grounds for objection to appointment under CCP 641, and the Special Master shall disclose to both parties or their counsel if represented within 30 days the existence of any such grounds. The failure of either party to file with the Court within 15 days any objection under CCP 641 shall be deemed a waiver of grounds for objection to the Special Master under CCP 641. Both parties agree that the requirement to post a notice indicating the case number and telephone number of the person to contact to arrange for attendance in any Special Master proceeding under California Rule of Court 244.1(C) is waived. To that extent, the records in this case are deemed confidential.

K. CONSENT

The parties acknowledge and initial the following:

____/____ I understand that a Special Master can only be appointed with my agreement and I agree to the appointment of the Special Master named in this stipulation.

____/____ I understand that I can limit the issues before the Special Master. I have reviewed the issues that are to be decided by the Special Master in this stipulation and I agree to each of them.

____/____ I understand that I can limit the time that the Special Master serves and that the powers of the Special Master will end at the end of the appointment term. I agree to the term of the appointment of the Special Master in this stipulation.

____/____ I understand that the orders of the Special Master cannot be reviewed by the Court and that if I object to an order by the Special Master, it is my responsibility to bring a motion before the Court, at which time the Court will conduct its own investigation and make its own order in accordance with the best interests of the child(ren).

____/____ I have had an opportunity to confer with the Special Master appointed in this stipulation, I have received this Special Master's written statement of policies and procedures, and I agree to this Special Master's appointment.

____/____ I understand that the Special Master cannot be called as a witness if I object to the Special Master's order.

____/____ I have had an opportunity to review this stipulation and to have questions about this stipulation answered by legal counsel.

AGREED:

DATED: _____

Dated: _____

FATHER

MOTHER

ATTORNEY FOR FATHER

ATTORNEY FOR MOTHER

I agree to my appointment as Special Master contained in this stipulation.

DATED: _____

SPECIAL MASTER

ORDER
IT IS SO ORDERED:

DATED: _____

JUDICIAL OFFICER