

# COMPLAINTS AGAINST BOARD LICENSEES IN THE FAMILY COURT SYSTEM: LIMITS ON THE BOARD'S JURISDICTION

The Board of Behavioral Sciences enforcement staff reviews allegations of misconduct by licensed marriage and family therapists (LMFT), licensed clinical social workers (LCSW), licensed educational psychologists (LEP), licensed professional clinical counselors (LPCC), and registered associates.

As a licensing agency reviewing a complaint, the Board is required to adhere to the statutes and regulations governing the practices of marriage and family therapy, clinical social work, educational psychology, professional clinical counseling, administrative law, rules of evidence and other applicable laws.

As a result, and due to the nature of certain complaints, the Board does not have the jurisdiction to pursue the following types of complaints:

## **COMPLAINTS AGAINST A COURT-CONNECTED MEDIATOR OR CHILD CUSTODY RECOMMENDING COUNSELOR**

The purpose of mediation is to reduce acrimony that may exist between the parties and to assist the parties in developing a parenting plan that protects a child's health, safety, and welfare that is in the best interest of the child, and optimizes the child's relationship with each parent (California Family Code § 3161 and California Rules of Court § 5.210).

### **A professional license is not required to be a mediator.**

Although mediators and child custody recommending counselors are required to have a master's degree in psychology, social work, marriage, family, and child counseling, or other behavioral science substantially related to marriage and family interpersonal relationships, they are not required to hold a professional license (California Family Code § 1815).

**The Board does not have the jurisdiction to pursue complaints against mediators and child custody recommending counselors, even if the individual holds a professional license.** This is because neither the setting nor the services provided are clinical or psychotherapeutic services for which a license with the Board is required.

**Persons who work in mediation and conciliation are preparing reports based upon protocols established by the Judicial Council.** There is a formula concerning both the methodology and content of these documents, governing their preparation. The use of these documents by the courts, as well as their confidentiality, is governed by the Family Code and regulations adopted by the Judicial Council.

To gain an understanding of the scope of such evaluations, please refer to section 5.210 of the **California Rules of Court**, which are applicable to every family court in California. The Rules of Court summarize many sections of the Family Code and how litigants are supposed to comply with them, including how to object to an evaluator's report during the dissolution proceedings. This information is online from court or government websites.

Since the work of a court-connected mediator or child custody recommending counselor is specifically produced for the family court, and since each such court is required to maintain a complaint handling mechanism, complaints should be directed to family court services.

## **COMPLAINTS AGAINST A SPECIAL MASTER OR PARENTING COORDINATOR**

A special master, sometimes called a parenting coordinator, is a professional appointed by the court to act in a quasi-judicial manner to make day-to-day decisions. These appointments can be made for various types of court cases including civil and criminal cases. Special masters are usually mental health professionals, but they can also be attorneys. The Board typically receives complaints related to divorced families in high-conflict cases where the parties are unable to come to an agreement.

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California Family Code § 10005(a)(6) states, "By local rule, the superior court may designate additional duties of the family law facilitator, which may include, but are not limited to ... serving as a special master in proceedings and making findings to the court unless the family law facilitator has served as a mediator in that case.

The court and the parties involved will draft a detailed and specific order outlining the responsibilities and compensation of the special master. The special master will make recommendations to the court. In issues related to parental disagreements, California law is clear in its intent that the "best interests of the children" are paramount.

Although the special master is required to hold a "current professional license in good standing," the role of the special master **"is a recommending role,** not negotiation, mediation, therapy, or education." A complaint alleging violation of the Board's unprofessional conduct laws may only be pursued if it is directly related to the therapeutic relationship as defined in law. Therefore, any complaint involving special masters and/or parenting coordinators **are not in the Board's jurisdiction** and must be addressed by the court.

The court order/stipulation appointing the special master and/or parenting coordinator should provide information on how to file a complaint if the individual has acted unprofessionally. Concerns may also be addressed with the county's family court services manager, who is able to assist with the process of filing a complaint with the court.

