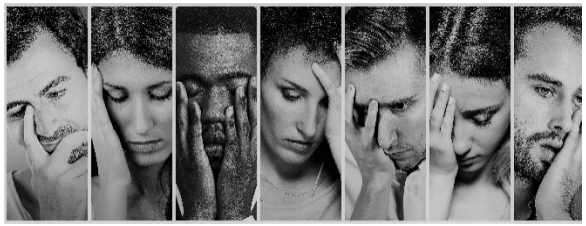
MEDIATION NETWORK

FIGHT, FLIGHT OR MEDIATE



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CHILD CONTACT AND CARE AFTER DIVORCE

As the non-custodian parent, do I have the right to see and visit my child?

Yes. If one parent is awarded primary care of a child, it does not mean that the non-custodian parent is deprived of all parental rights. You are entitled to have contact with your child, unless a court orders otherwise.

The non-custodian parent can exercise their contact rights by arrangement with the custodian parent either through mediation or by a court order. If the court does not say what the terms of the contact are then the custodian parent should allow you reason- able contact to your child.

"FAMILY MEDIATION SERVICES THAT ARE FAIR, AFFORDABLE and EFFICIENT"

What is "reasonable contact"?

To determine reasonable contact, factors such as where you stay in relation to your child, the age of the child, the relationship between you and your child and any other factor that might be relevant to your circumstances will be taken into account.

In practice, reasonable contact can mean anything from shared residency to every alternate weekend and alternate school holidays. Shared residency can mean that the child stays with you the one week and with the other parent the other week.

Is my ex-spouse allowed to refuse me contact with my child?

It is a criminal offence for the custodian parent to unreasonably refuse or prevent you from having contact with your child or exercising your parental rights and responsibilities. The offending parent can be sentenced to a fine or imprisonment of up to one year.

The custodian parent must advise you in writing of any change of their residential address. If this is not given, the custodian parent may be guilty of a criminal offence.

If contact with your child is part of your settlement agreement, your ex-spouse must comply with the court order or may be held in contempt of court.

How should I apply for contact with my child if I am already divorced and the court did not grant a contact order?

You have full parental rights and responsibilities in respect of the child if you were married to the child's mother at the time of the child's conception, birth or at any time between the child's conception and birth, unless a court order has forbidden you from exercising your parental rights.

If you have not been interdicted from having contact with your ex-spouse or the children, you can approach your ex-spouse to settle the matter without having to go to court. For example: You may approach MEDIATION NETWORK to assist you and your ex-spouse to settle the dispute and to draft a parenting plan, which can be registered at the office of the family advocate or made an order of court.

What will the court consider when granting a contact order?

The court will consider the following:

- the best interests of the child;
- the relationship between you and the child;
- the degree of commitment that you have shown towards the child;
- the extent to which you have contributed towards expenses in connection with the birth and maintenance of the child; and
- any other factor that should, in the opinion of the court, be taken into account.

If I am in the process of obtaining a divorce, must I include the right to contact in my settlement agreement?

Yes. When people are getting a divorce, the court must make an order regarding contact with the child.

If I am refused contact with my child by my ex-spouse, do I still have to pay maintenance?

Yes. Maintaining your child is your responsibility and having regular contact with your child is your right. You do not pay maintenance in order to see your child and one should not confuse rights with responsibilities.

How can my contact order be changed?

A parent may apply to a court to change, cancel, or suspend a contact order:

Variation or substitution (this means to change a contact order). For example, a father decides that he would like to see his child every 2 months instead of every alternate weekend because he is moving from Johannesburg to Cape Town.

Rescission (this means to cancel a contact order). For example, a mother finds out that her child is being abused by the father of the child and applies to the court to have the contact order cancelled.

Suspension (this means to postpone the contact order). For example, a father decides that he cannot manage his 12-month-old baby every second weekend and he would rather wait until the baby is two years old before he exercises stay-over contact with his child.

What happens if there is disagreement between the parents?

Parents should always try to solve problems between themselves before taking any drastic steps such as taking the other parent to court.

If there is a dispute between the biological parents of a child with regards to the best interest of the child that cannot be solved by the parents, they must seek to agree on a parenting plan through mediation before approaching the court.

A parenting plan may determine any matter in connection with parental rights and responsibilities including, but not limited to the following:

- where and with whom the child is to live;
- the maintenance of the child;
- contact between the child and any of the parents and any other person;
- the schooling and religious upbringing of the child.

It is a written agreement between co-holders (parents) of parental rights and responsibilities to determine how to exercise their respective rights and responsibilities in respect of a child.

A MEDIATION NETWORK family mediator will be able to assist parents to find alternative solutions to their disputes without having to go to court. Should a dispute not be settled through assistance or mediation, parents may approach the family advocate with proof that the mediation process failed and follow the legal process in the courts.

A parenting plan must be in writing and signed by both parties. It may be registered with the family advocate or made an order of court.

What is mediation?

Mediation is a voluntary process of structured negotiation that can help two parties in conflict to resolve their differences. Mediation is not a form of counselling. It opens discussion and helps you work through the different legal issues that need to be settled when getting a divorce.

A skilled mediator assists families to work out creative arrangements for themselves and their children. The settlement agreement is then made an order of court. The agreement could include the division of your estate, maintenance, a parenting plan, and any other arrangements that are in the best interests of your minor children. Parents should carefully consider the views of their children when negotiating contact and care arrangements.

Mediation is cost effective, less stressful than traditional litigation and saves time. It also helps parties maintain a positive ongoing relationship after divorce, especially when children are involved.

Have you applied your mind to the following potential consequences if the disagreements are not resolved?

- How much litigation will cost?
- How long it may take for litigation to be completed?
- The likelihood that even if you win the case, you may not be able to recover your costs from the other party?
- The personal and productive time taken up by preparation, consultation and court attendances during litigation?
- The effect litigation may have on your relationship with the children?

What do we offer?

- **Divorce Mediation**
  Divorce is stressful for the entire family. Mediation provides a facilitated, legally formalized process of negotiations.
  We offer clients access to our panel of:
  - Mediators
  - Attorneys
  - Social workers
  - Financial advisors
  - Psychologists
  - Play therapists
- **Parenting Plans**
  A Parenting Plan is a roadmap for separated or divorced parents. It ensures co-operation from both parents for a better future for their child. It helps to reduce future conflict by reducing tension and stress of the entire family.
  MEDIATION NETWORK provides a comprehensive plan for a fraction of the cost in a more timeous manner compared to conventional channels.
- **Maintenance Assistance**
  Every child deserves to be maintained by BOTH parents. This can be achieved through a mediated process that is confidential and transparent. It can also be referred to our panel of experts to ensure that the child remains protected, and the individual parents are not taken advantage of.

*NABFAM accredited mediators**

Scan for more information on our website.