LEGAL QUICKSHEET™

Preparing Your Client for Early Neutral Evaluations

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Social Early Neutral Evaluations (SENEs)

Practice Tips for Representing Clients in a SENEs

- SENE is not appropriate for every case. Be sure to assess for domestic violence. Even if domestic abuse is a factor, it can be a fit. Be mindful of safety protocols.
- It is a voluntary process. Be sure your client is informed about the process before the Initial Case Management Conference (ICMC).
- Review a copy of the Best Interest Factors with your client and give them a copy.
- Remind clients to have a picture of the child (can be on phone but not preferred).
- Prepare your client by explaining possible parenting time schedules in advance.
- Be truthful with the client regarding his/her chances of success on any given issue – if they are not being reasonable, tell them so and save everyone time and money.

Explain the SENE Process to Your Client

- Explain differences and similarities between SENE and mediation.
- Describe the confidentiality of the process, with mandatory reporting exception.
- Discuss possible outcomes and explain, repeatedly, the art of compromise.
- Let your client know what to expect.
  - Describe the parties in the process
  - Physical set-up of the room or online format
  - Ability to take a break if needed
  - Describe the timeline of the SENE session:
    - Introduction by SENE team
    - Presentation by parties (20-30 minutes each)
      - Self-presentation is key; very little to no reliance on the attorney (attorney role for guidance and/or redirect to get back on point)
      - Petitioner (typically) goes first. If represent the Respondent, warn client not to react to Petitioner's presentation; client should present as if he/she had gone first.
    - Response from each party (5-10 minutes)
    - Questioning by SENE team
    - SENE team consultation / break for clients
    - Feedback from SENE team
    - Attorney / client caucus
    - Negotiations – shift to more standard mediation mode

Help Your Client Prepare an Outline

- Have client go through Best Interest factors in detail and outline their "story" on their own – in writing or verbally.
- Give them a sample outline to organize their thoughts:
  - History of the relationship between parties
  - Describe parenting arrangements:
    - History of birth and infant care
    - Care for the child(ren) as they grew
    - Division of household duties
  - Describe child(ren) – bring them to life for SENE team
    - Personality, age, maturity, physical health and any problems, special needs, temperament and how they handle change, likes and dislikes, sports and activities of interest, school achievements/problems, relationships with peers
  - Parenting schedule since separation and how kid(s) doing with that schedule
    - Logistical issues – work schedules, distance from homes
  - Discuss the benefits / good attributes of the other parent – find at least one!
  - Discuss areas of concern with the other parent
    - Domestic abuse – discuss any incidences of domestic abuse with details on what, when, how, and outcome. Describe if fights have escalated to pushing, shoving, objects thrown, police called, etc. Describe discipline with child that has escalated and any concerns.
    - Specific concerns re: mental health, drugs or alcohol, diversity or cultural issues, or involvement of new significant other. Give examples.
    - Any concerns of attempts on one parent's part to exclude the other from the child(ren)
  - Help the client to articulate their concerns in a meaningful way – and a way that relates to future parenting
    - Describe any patterns of conflict during the relationship or any major areas of disagreement / argument (were they about parenting?)
    - Discuss your client's own failures, what the other parent will say about them, and any efforts to rectify (criminal, addiction, abuse)
    - Discuss the benefits he/she brings to the child(ren) and specific activities that he/she does with the child(ren)
    - Describe the communication between parties (past and present)
    - Point out areas of agreement and show evidence of being able/unable to raise the child(ren) together through joint decisions
  - Help the client to formulate what it is he/she is looking for (articulate their interests, not their positions)
    - Find out what your client wants, but also why they want it. If they can't explain why, explore if it is really necessary
  - Generate multiple options with your client, so he/she can see different ways to resolve matters

Practicing the SENE Presentation / Day of SENE

- Have the client practice his/her presentation, either with you or at home.
  - Warn the client of timing issues
    - May need to cut information
  - Redirect client if they go off on a tangent. Needs to have focus on the child(ren)
  - Don't let the client read from their paper, ideally client should have only a one page outline with bullet points
- Remind them to speak from the heart and to take a deep breath if they need it.
- Remind her/him this is about the child(ren), not the fight with the other parent.
  - Admonish her/him to not argue with the other party or to talk during the other party's presentation
- Remind the client to let the evaluators hear their sadness and frustration, not anger.
  - They should look at the evaluators and not the other party
- Remind her/him to take notes and not react overtly to comments of the other parent (no eye rolling, heavy sighs, or talking while listening to the other parent's presentation).
- Remind the client, especially if he/she is the Respondent, to start as if they are the first one to give their presentation.
- Remind her/him that a break can be taken at any time.

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Financial Early Neutral Evaluations (FENEs)

Explain the FENE Process to Your Client

- Explain the differences and similarities between FENE and mediation.
- Describe the confidentiality of the process.
- Explain the format of the session and what topics will be addressed:
  - Describe the role of the evaluator
  - Physical set-up of the room or online format
  - Ability to take a break when needed
  - Ways to find comfort in this uncomfortable setting
- Explain the difference between SENE and FENE (if client did SENE).
  - The *lesser* need for self-presentation, more help expected from the attorney
- Advise client that there may be a need for multiple FENE sessions.
- Explain Date of Valuation and the need to capture that snapshot in time.
  - Check ICMC Order regarding date of valuation (depends on the County)
- Describe the legal arguments that will take place at FENE and give client relevant statutes (spousal maintenance, potential income, non-marital claims, etc.).

Gathering Information

- Send opposing party a list of documents needed from other party.
  - Especially if other party is still in house or was more in charge of finances
- Discuss and identify if any assets should be valued by an expert (business, house, pension, collections, etc.)
  - Should this be done by neutral or hire own expert?
  - Should this be done before FENE? Or attend FENE first?
    - Purpose of FENE is to do it early in the process. Discuss option of attending FENE and agreeing on a value or discussing settlement on all other asset/debt division and valuation after FENE. It will depend on the facts of the case.
    - Need to make these decisions early if going to be used at FENE
    - Remind client of option to attend second FENE session.
- Discuss and identify any non-marital interests that client may have.
  - What additional information is needed to establish non-marital claim? Determine whether expert needed for tracing or assign assistance as needed.
- Assign your client homework:
  - Need a statement for every asset and every liability (as of date of valuation)
  - Instruct client to go online and get a year's worth of statements
  - Have client go to Kelly Blue Book for any vehicles, boats, etc.
  - Documentation to establish any non-marital claims
    - House – closing documents, value of home at time of marriage
    - Retirement/Other assets – any statements from date of marriage
  - Income (if child support or spousal maintenance involved)
    - Historical income as needed (tax returns, Social Security earnings record)
    - Last three (3) paycheck stubs
    - Year-end paystub
  - For child support:
    - Have the client determine the cost of the medical, dental, vision coverage for the parties and the child(ren) – best done with a current rate sheet
    - Help determine annual cost of daycare expenses, and review if those costs will be changing in the foreseeable future
  - For spousal maintenance:
    - Have the client gather the social security work history for both parties
    - Give the client a budget worksheet to fill out
      - Give tips on how best to determine expenses (review of last year's spending, review historical family spending, bank statements)
      - Have client gather monthly bills to help support a reasonable budget
    - If client will be leaving marital house, have them do research on the cost of alternate housing
    - If client will need their own policy of medical/dental, have them look into the estimated costs

Preparing for FENE

- Create a spreadsheet of all assets and liabilities (marital and non-marital).
  - Review client's documents and fill in spreadsheet as of date of valuation
- Label the source of information and date (i.e. statement 03/01/2017).
  - Create a line item for each asset and liability even if no documentation – holds place to raise questions later
  - Review retirement accounts to determine what type
    - If you have FinPlan or Family Law Software, calculate estimate pension value
- Meet with the client and review spreadsheet of assets and liabilities.
  - Go through variety of possible outcomes with client
    - Does client want the house? Can he/she afford it?
      - Consider having them talk to mortgage loan officer to discuss refinancing or assumption options prior to FENE
    - Equalize retirement assets
    - If there will be an equalizing payment – how can it be paid?
    - Talk to your client about their expectations and whether they are realistic
- For child support, use the Child Support Calculator to determine support options.
- For spousal maintenance:
  - Review budget with client in detail.
    - Does it portray all annual expenses?
    - Is the budget realistic?
    - Does client need additional supporting documentation?
  - Discuss work options and any potential retraining, if applicable
  - Discuss with the client the various outcomes for support based upon the numbers you are seeing
    - If you have FinPlan, run calculations for spousal support
- Exchange the asset/liability spreadsheet, and <u>all supporting documentation</u>, with opposing counsel and send to evaluator prior to FENE.
  - Review whether evaluator wants a letter outlining client's position

Day of the FENE

- Make a plan to meet the client in advance.
- Bring a notebook and pen for the client to use.
- Remind her/him to be calm and truthful.
- Remind her/him to look at the evaluator and not the other party.
- Admonish her/him not to argue with the other party or to talk over other party.
  - No eye rolling, heavy sighs, etc.
- Remind her/him that a break can be taken at any time.
- Remind them that this is an opportunity to negotiate and brainstorm and the process is not binding.

Special Considerations for Virtual ENEs

- Confirm client has appropriate equipment. Preference for iPad or computer over a phone.
- Consider a practice run to ensure functioning equipment, camera settings, and document sharing abilities.
- Expectation to be in a quiet place and alone.
- Explanation of breakout rooms.
- Direct client to sign into the on-line session at least 5 minutes early to ensure all is working.
- Have client prepared with picture of child(ren) if requested.
- Describe virtual signing.
- Explain what to do if the client gets kicked out.
- Establish a way to communicate with client during the session.