

A Brief Guide to Family Mediation for Parents who are Self-Represented



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This Guide is one in a series developed by the AFCC Access to Family Court Services Task Force. For additional information and resources, go to the Center for Excellence in Family Court Practice in the online AFCC Resource Center at www.afccnet.org

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INTRODUCTION

When parents separate or get divorced, there are usually strong emotions and often disagreements about children and financial issues. Sometimes, parents have different ideas about parenting arrangements that are best for their children, and that can lead to conflict. Other times, there may be complex financial or legal issues for which parents require assistance and advice. It is almost always helpful to be represented by a lawyer, who can help you sort through difficult legal questions and understand different options for resolving your disputes. Unfortunately, many people experiencing separation and divorce do not have a lawyer to represent them. At a time when many households experience financial stress, many simply cannot afford legal representation. Some parents make the decision to represent themselves for other reasons.

If you are not represented by a lawyer, there are other ways to get information and assistance that can help you to resolve separation and divorce-related disputes. Some places have self-help centers or volunteer lawyer programs. Courts often have websites or self-help kiosks that provide valuable information. Lawyers may offer “unbundled legal services,” which will be discussed later in this *Guide*.

The most widely-used dispute resolution process for separating and divorcing parents is mediation. Mediation is a process designed for separating and divorcing people to resolve their conflicts. Mediation is not intended to replace legal representation, but it can help to resolve disagreements between parents and guide you through some of the questions you may have about your separation or divorce.

You may have already started your family court case when you first learn about mediation. In some places, you might even be ordered to participate in mediation by a judge before you are permitted to have a final hearing. This is because in most situations, it is best if parents can work out their disagreements by trying to work together rather than having a judge make decisions for them. The purpose of this guide is to help you to better understand what mediation is and decide if it is a process that might work for you.

FREQUENTLY ASKED QUESTIONS

What is Mediation?

Mediation is a process in which a neutral and impartial third person -- a mediator -- helps you and your children’s other parent negotiate and make decisions together about important issues that need to be resolved when parents are living apart. Mediators help parents communicate and resolve misunderstandings. Agreements that you make in mediation can help your family succeed as you change the structure and routines for everyone.

Can we use a mediator instead of a lawyer?

Mediation is not a substitute for full legal representation, which is when a lawyer represents you from the start of your case to the end. The mediator cannot take sides or provide you or the other parent with legal advice. It is strongly recommended that you have any mediated agreement reviewed by a lawyer. If you do not have full legal representation, a mediator may be able to help you find a lawyer who can provide unbundled legal services. Lawyers who provide unbundled legal services can do individual tasks, like reviewing your agreement, coaching you in negotiations, or answering legal questions that you have during mediation. Unbundled legal services can be less costly than full representation and are often helpful for self-represented parties.

What does the mediator do?

The mediator helps parents communicate with each other about any issues that are in dispute. The mediator will help you listen and talk so you understand each other and each of your views of the situation. Mediation is less formal than a court hearing or trial. The mediator is not a judge and will not make decisions for you or tell you what you must do. The mediator does not determine facts, give legal advice, or decide the outcome of your case. Instead, the mediator helps you understand each other's concerns, identify options, and find solutions that are best for your family. Even if a court tells you that you must go to mediation, you won't be forced to make any decision unless it is acceptable to you. In mediation, you speak for yourself and make your own decisions. The goal of mediation is to help you reach a voluntary agreement with solutions that work for your family. Although the mediator's job is to help you reach an agreement, she should not pressure you to agree to anything that is not acceptable to you.

Who participates in mediation?

Usually, the two parents meet privately with the mediator. This allows the other parent to pay full attention to your concerns, and for you to focus on what the other parent is saying. Some mediation programs require mediators to hear from the children, but they are not regular participants in the process. In some situations, it may be appropriate for a lawyer, a support person, or other family members to participate in the process. If you want your children to give their opinion on a specific issue or proposal, they might come to mediation or the mediator might meet with them separately—especially if they are older. Participants in mediation do not attend to provide testimony or serve as witnesses, but to offer information and support that will help you and the other parent make better decisions together. The decision to have people other than parents participate is usually made together, with the mediator and the other parent.

What will we talk about in mediation?

Parents can use mediation to talk about many issues. You can discuss your concerns about legal issues such as parenting time, legal custody, property division, and child support. You can talk about day-to-day care, such as who will drive your children to dance class or soccer practice, or who will be responsible for picking them up after school. You can also discuss long-term

arrangements for school, medical care, and summer vacation schedules. In general, mediation is a place where you can work out financial issues, how specific parenting decisions and responsibilities will be handled, and other details related to the care of your children.

We were never married. Can we still use mediation?

Whether you are married to the other parent or not, family separation leads to big and small changes for parents and children. You will need to make plans for your children, and if you lived together you may need to divide property and sort out financial issues. Mediation can help whether you were married or not.

What if we are very angry with each other and have trouble talking?

Family separation can often create great emotional stress. Changes can result in anger or fear, and naturally cause conflicts between family members. The way that you address these conflicts can affect the entire family's adjustment, especially the children's, for years to come. Mediators are trained to work with people who are upset, angry, fearful about the future, and expressing these strong emotions. Many parents find that even under these conditions, they can communicate with each other and make agreements in mediation that balance the interests of each family member and help everyone in the long run.

Does the mediator tell anyone what we talk about?

In most cases, what you say to the mediator is confidential, although there are exceptions to this in some programs. The mediator should be very clear about what information will and will not be shared. Court rules and some laws limit what the mediator can say to people outside the mediation. Other court rules or laws might require the mediator to give a report to the court. Even if mediation is confidential, there could be information that the mediator would have to report to a court or some other agency. For example, the mediator would have to disclose communications about or threats of violence or harm to children.

Where do I find a family mediator? How much does mediation cost?

Some family mediators are employed by a court or community mediation program. These programs may offer mediation for free or for a low cost. Some programs may offer mediation on a sliding-fee scale, where the amount you are charged is based on your income. If you are hiring a private mediator, there is usually an hourly fee. You should ask about the costs and how payment is expected to work before you agree to begin mediation. Some mediators will insist that the fee is shared equally by you and the other parent. Others may agree to different arrangements. Some will want a retainer-- payment in advance for a certain number of hours. Many mediators will have a detailed "Agreement to Mediate" that gives you all the details about your mediation. If the mediator does not give you an agreement that you can read before you start mediation, you should ask for one. Mediators have ethical standards just like doctors and lawyers; they are required to be very specific in making arrangements for mediation.

How long does mediation last?

You will want to allow enough time for mediation. Mediation sessions are usually scheduled for 90-minutes to two hours. Most mediations will take two or three sessions, sometimes more. The number of sessions you need will depend on your situation and how well you are prepared to do the work required to reach agreement.

When is mediation not a good choice for me?

Mediation may not be the best choice for you if there are concerns about child abuse, mental illness, chemical dependency, or if the health or safety of one or both of you might be put at risk. If there has been a history of domestic violence or intimidation in your relationship, mediation may not be the best way to resolve your disputes. Mediation may not be right for you if do not feel comfortable disagreeing with the other party, or if you do not feel safe coming to or leaving a mediation session alone. If any of these factors affect your situation, you should let the court and the mediator know before attending mediation. The mediation may be cancelled or modified in some way to make it more comfortable for you and your family. If you have any concerns about mediation, consult an attorney if you can or let the court-connected mediation service know – they can help determine the best way for you to proceed.

How do I know if I should try mediation?

There are many things to consider as you decide if mediation is the right process for you and your family:

- A mediator can help you identify and discuss issues related to your separation or divorce that you may not have thought about before, such as how to share parenting time in the summer, or who provides transportation. Although the mediator cannot provide legal advice, he or she can help you find information that is important for good decision making.
- Mediation can help you talk with the other parent about what you each need, and what your children need. This often helps you to reach creative, customized solutions that work for everyone.
- As parents you know what your children need better than anyone else, including a judge. That is why mediation is designed for parents to make decisions. When parents make an agreement in mediation, they are more likely to stick to it.
- In mediation, you can avoid some of the arguments that you may have in a court process by focusing on solutions rather than blaming one another. In some cases, mediation can help improve your long-term relationship with the other parent, and that will benefit your children.
- When you reach an agreement in mediation, it can be written up as a court order, which will have the same force as a decision by a judge.

PREPARING FOR MEDIATION

If you decide to mediate, it is important that you prepare for mediation, just as you would for a court hearing or trial. The following steps will help you organize your thoughts so you can come to mediation with good ideas for making plans and agreements that work for your family.

Getting Legal Information and Assistance Before and During Mediation

If you are going to mediation, you are likely to be involved in a court case. Therefore, the information that you need to help you make decisions can be different from state to state, and even court to court. You should take the time to see what information is available about your court, such as procedures, rules, and forms. Information may be available on the court website, or from clerk of court's office. Some courts have self-help centers that are designed to provide information to people who are self-represented.

It may be frustrating if the court or clerk of court employees will not give you advice or answer your legal questions. It is important to understand that they are not trying to be difficult. Employees of a court or clerk are not allowed to give legal advice. They can, however, direct you to the forms, rules, and laws that you might need for your preparation. Many states offer information about how to represent yourself in mediation and court cases. You can see a list of those states with links to the materials at: <http://www.ncsc.org/Topics/Access-and-Fairness/Self-Representation/State-Links.aspx>

In some places, there are free education programs or clinics that will help you review your information and make sure you know what you need to go forward with mediation. If you have a low income, you might qualify for a legal aid attorney to represent you.

If you are not eligible for free legal services, there may be attorneys who will help you for different parts of your case, rather than the whole case. This is a more affordable option called "unbundled legal services." Lawyers who provide unbundled legal services can perform many tasks, including coaching you on negotiations during the mediation process, reviewing a mediated agreement, and drafting paperwork to submit the agreement to court. You can decide and pay for only those services that you need. To find out about attorneys in your area who offer unbundled services, contact your local bar association or legal aid office. You can learn more about unbundled legal services in [*Unbundling Legal Services: A Guide for Consumers*](#).

Remember, mediation may seem like it reduces your need for legal representation, but if you are involved in a legal process you should seriously consider talking to a lawyer to understand your rights and the legal consequences of agreements made during mediation.

Get in the Right Mindset to Mediate

Approach mediation with an open mind. Make sure you are willing to listen to both the mediator and the other parent. Mediation is not the time to hash out old fights about what went wrong in the relationship. If you can be open to the other parent's ideas, they are more likely to be open to your ideas. Then, you can brainstorm options together until you have solutions that work for everyone, especially your children.

Make a commitment to yourself to keep your temper in check and watch what you say. Harsh words and accusations directed at the other parent will likely make the situation worse and reduce the chances of coming to an agreement.

Remain flexible. Try to avoid going to mediation with a single outcome in mind. If you think there is only one plan or solution that will work, it will be difficult to be creative or to compromise and reach any agreements. Remember, the other parent has to agree to any solution too. Instead, think about what is most important to you and where you might be more flexible.

CONSIDERATIONS FOR YOUR PARENTING PLAN

One of the most important outcomes of family mediation is a workable parenting plan. When you think about mediating a parenting plan for your children, there are many important things for you to consider.

In mediation, you will discuss and try to resolve issues related to the care and support of your children. For example, you and the other parent will need to decide how you will make major decisions about the children. These can include:

- choice of school and educational services
- medical treatment
- religious upbringing

You will want to consider your children's ages, personalities, experiences, and abilities. Every child is different. Adjust your plan to your children, *not* your children to your plan. Many courts have forms with parenting time schedules that are specific to different children's ages and needs. You should work toward a plan that sets out your parenting time and provides your children with a sense of security and a reliable routine.

You should also discuss what your parenting plan will say about how to make day-to-day and emergency decisions. These decisions are usually made by the parent who is with the children at the time, but it is something you may wish to discuss. You will want to make a plan that meets your children's basic needs for: protection, guidance, a healthy diet, exercise, educational and emotional support, social connection to friends, and good medical care. You and the other parent may agree to make these decisions jointly, have them made by one parent, or divide different decisions between you.

It is important that in mediation you work toward a detailed plan that will work for you over time. You will want to discuss ways to handle the children's activities, schoolwork, vacations, and holidays.

You should also consider a plan for communication, and a plan for resolving any future disagreements between you.

As your children grow you may need to change the plan you developed in mediation. There are also likely to be new issues that come up if a parent wants to move or changes employment. Although you cannot plan for everything, it is worth thinking about how your plan will work in the future if circumstances should change.

FINANCIAL ISSUES

Most separating and divorcing parents must deal with financial issues. Mediation may be helpful with money issues as well as parenting issues. Courts and self-help centers usually have forms and worksheets to help you provide information about your finances. Some court mediation programs may require you to mediate financial issues and others may only mediate issues related to parenting time and legal custody. Private mediators will usually mediate both parenting and financial issues.

There are many financial issues for you and the other parent to decide, including:

- Child support and other children's expenses, such as health insurance, medical expenses, childcare, clothing, and other expenses for children's activities
- Tax deductions and life insurance beneficiaries
- School and college expenses
- Spousal support and expenses, health insurance, life insurance, pension plans, housing expenses, legal expenses and court costs
- Distribution of property. Many items are considered property:
 - Your home if you own it (mortgage, utilities, taxes, and insurance)
 - Cars and/or other vehicles (payments, insurance, expenses)
 - Personal property, such as home furnishings and appliances
 - Other assets, including savings and checking accounts, investments, life insurance, tax refunds
 - Debts (credit card, consumer loans, personal loans, taxes due)
 - Miscellaneous items (bankruptcy, family business, inheritances)

These and many more details will need to be discussed in mediation. You can make a list before mediation and work with the mediator make sure you have developed a complete list of items to discuss and resolve.

COMPLETING MEDIATION

While the goal in mediation is to resolve all disputed issues, there are times when parties simply cannot agree. Even so, you will have had the opportunity to share your concerns with the other parent and to hear what is important to them. It is possible that this will help you as you move through the process.

If you do not reach an agreement or agree to some but not all issues in mediation, you should check with the court clerk's office to determine the next steps if you wish to pursue your case with the court. If you reach an agreement, the mediator will write down the terms for you and the other parent to review. You should make sure that you understand everything in the agreement. If you do not, ask the mediator to clarify whatever you do not understand. Before signing any agreement, you are strongly encouraged to have a lawyer review the document to make sure you understand the legal implications of the agreement. As discussed above, you may be able to hire a lawyer who provides unbundled legal services to review the agreement. Once the agreement is signed, it must be filed with the court before it becomes an enforceable order of the court. The court clerk can advise you about the process for doing this.

CONCLUSION

Separation and divorce are legal issues; having the advice of a lawyer on the issues is helpful. If you are unable to have legal representation, mediation may be your best opportunity to resolve your case by making decisions together with your children's other parent. Mediation's focus on cooperation can help you set the tone for positive interaction with your children's other parent down the road. The mediation process may even assist you in restoring some sense of trust and repairing lines of communication. You may no longer be joint partners, but you will remain parents together.