



Divorce Mediation

What is mediation?

Mediation is a way for people to improve communication and create solutions with the help of a mediator. A mediator is a specially trained, neutral person who helps with communication and discussion of your concerns so you can reach a voluntary agreement that meets your needs. A mediator is not a judge or arbitrator, the mediator does not decide your case or give opinions about how the Court will decide. The mediator may discuss options and encourage you to think creatively about how you can agree on ways to settle your case.

Mediation is a structured process; but mediation is not as formal as a trial. First, the mediator will ask you to talk about each of your views. The mediator listens carefully and may ask questions to help you focus on exactly the items that you need to discuss and how to identify and resolve the issues in your case. You may not come to agreement on all of the issues, but even partial agreement can make it easier to move through the court process. One of the advantages of mediation is that you will create your own agreement. You are the people who know the most about your case and all the issues—parenting your children, resolving financial issues and planning for the future.

It is the mediator's job to offer a way for you to resolve your dispute successfully. In some cases, the mediator may ask you to agree to some basic ground rules during the discussion (e.g., to respect each person's right to talk without interrupting, to listen carefully to the other person and, to help you use your time wisely by not making accusations, arguments, shouting, or calling the other person names.

- You will have the time to explain your perspective. The mediator may summarize what you say and then help you focus on the issues you will want to resolve.
- You, not the mediator, know the most about your concerns and the important issues to resolve. The mediator can help you discuss these concerns and issues and work with you to find workable options and agree to terms of an agreement that are acceptable to both of you. You When you agree on solutions to some or all issues, the mediator may prepare a written summary (or memorandum of understanding) of your agreement that you can have an attorney review. It is important to have an attorney review your agreement/memorandum because you and the mediator may not have discussed all of the issues that you

need to resolve. An attorney can help you finalize a document to present to the Court – an agreed entry.

- You may need more than one mediation session to resolve your issues depending on how many issues there are and how complex they are.

Why mediate?

In mediation you control the outcome. If you are parents, mediation will be especially helpful because you can make agreements about your children that meet their needs as well as yours. After all, you know the most about your family. In a trial, when a judge decides a case, no matter how carefully they listen, they will not have as much information as you do to create a plan that ends your marriage and allows you to continue to be the best parents possible for your children. Research shows that when people who develop their own solutions for a problem they are more likely to be satisfied with the agreement and follow it.

When you mediate you have an opportunity to deal with the challenges of disagreeing about everything. You may be angry with your spouse, but in a divorce you need to focus on how to develop a new relationship. Successful mediation may help you avoid the stress and often hostility that may be part of a trial. If you have children, they will benefit from a more positive experience that results in plans that work well for them. You can help your children adjust to the new (and sometimes scary) living arrangements and other changes in their lives. Although there may be a fee for mediation, a successful mediation is generally less expensive than a contested trial. Successful mediation will often reduce attorney fees and court costs. It also may reduce expenses for appraisals, accounting services, expert witnesses and other expenses that are normally part of an adversarial divorce.

What issues can be you mediate? You can try mediation to deal with all issues in a divorce—including parenting schedules, parenting responsibilities, child support, spousal support, property division, and other financial issues. If your mediator works for a court you may be limited to mediating parenting issues. Sometimes parties who think about mediating have had problems with domestic violence in their relationship. Mediators do not mediate the issue of domestic violence itself. There should be a private screening process; so that if you are a victim of domestic violence, you can express any concerns you have about safety. If your mediator or a staff member does not speak with you privately about your concerns, you should talk to your attorney or the hearing officer about your concerns. Tell them if you feel you will not be able to express your opinions, or negotiate with, the other party. The mediator may use separate rooms for the parties or conduct the mediation by phone. A court can order you to participate in mediation; but the ultimate decision to reach a settlement is yours.

How do you prepare for mediation? It is important for you to exchange information with each other and the mediator before your first mediation session. The mediator may give you an information packet so you can make a list of all your debts, all of your assets. You will also need to tell the mediator about the current arrangements you have to care for your children and how you are paying their expenses. Depending on the complexity of your case, the mediator might also suggest that you get assistance from financial experts, appraisers and, pension evaluators. Many mediators prepare an agenda before each mediation session. Before each session you should think carefully about the issues you will discuss. Talk to an attorney if you need legal advice before talking about the issues in the mediation session. This preparation is critical to make the most complete agreement in mediation.

How can an attorney help you in divorce mediation?

Participating in mediation is not a substitute for having an attorney. The mediator will not give legal or financial advice. Attorneys help their clients understand the law and make informed decisions about resolving issues in mediation. If you wish, your attorney or another support person may attend and participate in mediation sessions. Assistance from an attorney before or after the mediation can be helpful even if the attorney doesn't come to the mediation with you. An attorney can help you prepare for mediation—organize your thoughts and prepare a list of issues for discussion. And after mediation, an attorney can review your agreement and make suggestions about additional issues or changes to clarify the agreement. An attorney can incorporate your agreement into a separation agreement or divorce decree that will be the final document to resolve the divorce.

Can your spouse talk about what you discussed in mediation in court?

Usually you, your spouse, and the mediator will agree that no one will talk to other people about what you say in mediation. You may make decisions that the court will need to know, such as child support and payment of debt. But when it comes to testifying in court about other things you might say, you your spouse and the mediator have a privilege that prevents most of the things said in mediation from coming into court. There are a few exceptions to the privilege and you may agree that you want additional information to go to the Court. Most mediators will ask that you read and sign an agreement that has details about confidentiality and privilege

The mediator will not discuss your case with anyone, including the judge, except to say that you met, who attended and whether you reached an agreement.

What happens if you don't reach an agreement

You might not reach an agreement in mediation. You may settle unresolved issues in direct conversations with your spouse; your attorneys may negotiate for you as well. A magistrate or judge will decide any remaining issues.

Where can you get more information about divorce mediation?

Contact the Supreme Court of Ohio Dispute Resolution Section at (614) 387-9420 or visit <https://bit.ly/2OleqXC> to see a list of court mediation services available in every county in Ohio. You can also contact the court where your case is pending to ask about mediation. If you and your spouse want to mediate before you file your divorce you can look on-line for mediators in your area.

4/14/2014

© April 2014 Ohio State Bar Association

Funding from the Ohio State Bar Foundation

This is one of a series of LawFacts public information pamphlets. Others may be obtained through www.ohioabar.org/LegalHelp

The information contained in this pamphlet is general and should not be applied to specific legal problems without first consulting your own attorney.