



MEDIATION

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BASIC EXPLANATION

Following the Initial Status Conference, the Judge in your case will almost certainly order that you and the other party participate in Mediation. Mediation is a form of “alternative dispute resolution” and gives the parties an opportunity to resolve issues in their case outside of Court. Typically, topics such as parenting time, decision-making, child support, spousal maintenance, and division of marital property are discussed in Mediation.

Mediation can be beneficial as you can agree to an arrangement that may not otherwise be ordered by the Court, such as a unique parenting time schedule or division of assets. It can also provide more control to the parties over their case and result in a more collaborative outcome. Statistically, parties feel better about agreements they have a part in reaching, and are more likely to abide by them. The more issues you are able to resolve in Mediation, the fewer resources you need to spend on litigating those issues in Court. However, parties are sometimes unable to resolve issues in Mediation, and the opposing party may not be amenable to a collaborative approach. Your attorney will convey your interests and positions to the Mediator and will guide you through negotiations. At the end of the day, you make the decision as to whether or not you agree to the opposing party’s terms, and your attorney is there to facilitate any agreement, if one is possible.



OVERVIEW OF THE PROCESS

First, the Court will issue either an Alternative Dispute Resolution (ADR) Order or an Order Requiring Mediation. The Court Order will specify how long the parties have to both find a Mediator and schedule mediation, and the deadline by which Mediation must be completed. If Mediation is not performed, the Court may dismiss your case.

Second, your attorney and the other side will agree on one or more potential Mediators to choose from based on the issues in your case. From those options, one mediator will be selected. If the parties cannot agree on a single Mediator, they will use the Office of Dispute Resolution (ODR), which will assign an available Mediator.

Third, each party must pay their share of the Mediation. Private Mediators tend to be more expensive than ODR Mediators, and your attorney will provide a cost-benefit analysis to you regarding these options. If you qualify for indigency, your fees may be waived or potentially reduced.

Fourth, the Mediation “session” is scheduled for a day on which both parties can attend. Mediation through ODR is typically scheduled for a minimum of two (2) hours and private mediation often lasts longer. Mediation is conducted in a “shuttling” format, in which the parties are separated and the mediator “shuttles” back and forth between them. Thus, you should have no contact with the other party during the session, unless you and the other party believe it would be fruitful to be in the same room. Mediation may also be conducted by teleconference, which has become more common with Covid-19.

Fifth, your attorney will report back to the Court regarding what issues were resolved, if any. If some or all issues were resolved, your attorney or the opposing party’s attorney will draft a Memorandum of Understanding carefully outlining decisions that were made. You will then have an opportunity to review the Memorandum and sign it. When both parties have reviewed and signed the Memorandum, it will be filed with the Court.



LEGAL BASES

Colorado Revised Statutes (C.R.S.) § 13-22-311

This section of the law allows any court in Colorado to refer a case to Mediation. The exception to this rule is if either party claims that they have been a victim of domestic violence by the other party and is therefore unwilling to engage in Mediation.

C.R.S. § 13-22-307

This section of the law ensures that Mediation is confidential. A Mediator cannot disclose anything that was said or done in Mediation unless there is serious threat of bodily harm. Only when both parties sign a Memorandum of Understanding do the decisions made in Mediation become available to the Court.

JDF 211: Request to Reduce Payment for ODR Services

This form may be used to request that the court waive or reduce the Mediation fee.



TIPS

(1) Give yourself time to think through what you want, what you need, and what you can live with.

Mediation provides an excellent way for parties to resolve issues without getting a judge involved. However, whatever is agreed to will then become enforceable by Court Order. It is critical that you think about your goals and “hard lines,” or points on which you are not willing to compromise. While you should be realistic about what the other party will agree to, it is important that you also be satisfied with whatever arrangement is agreed upon, assuming it aligns with what you can tolerate.

(2) Communicate your wishes and concerns openly with your attorney.

The more your attorney knows about your wishes and concerns, the more equipped they are to assist you in presenting them. Your attorney will encourage you to come up with specific goals as well as points on which you are willing to negotiate to otherwise meet your goals.

(3) Understand the mediator's role.

The Mediator does not represent either party. They will not know anything about your case, nor have an interest in what is decided. It is their job to push each party to reach a compromise.

(4) Prepare for a long day.

Mediation can be mentally and emotionally draining. Get plenty of rest the night before, bring snacks to get you through the day, and set up childcare if needed.

(5) Do not agree to things you are not comfortable with.

It is of the utmost importance that you can live with whatever decisions are made in mediation for the foreseeable future. The topics discussed in mediation will affect your financial status and, if relevant, the care and custody of your child(ren).

FREQUENTLY ASKED QUESTIONS

What happens if we don't agree on anything?

There is no penalty for not resolving any issues in mediation. If this occurs, the Mediator will inform the Court that no issues were resolved when they certify that Mediation was performed. Your attorney will then request that the Court set all of the remaining issues for a Mearing.

What happens if I don't like the Mediator?

As discussed above, the mediator has no interest in what decisions are made and does not have an allegiance to either party. Typically, a dislike for a mediator reflects an unwillingness of the parties to agree on some or all of the issues. Mediation cannot be rescheduled due to a dislike of the mediator.

Can we go to Mediation more than once?

If Mediation has already been performed but a new issue is presented to the Court by either party (e.g., one party is disputing a parenting plan for the first time), the Court can order the parties back to Mediation. If you are unwilling to participate in an additional Mediation session, your attorney can request that the court waive additional Mediation for compelling reasons. If both parties would like to engage in an additional round of Mediation, they can choose to do so without a Court Order.

What if I change my mind about something I agreed to at Mediation?

What you decide at Mediation does not become "final" until you have reviewed, approved, and signed the Memorandum of Understanding that is then filed with and approved by the Court. If after the Memorandum has been signed and filed there is an arrangement that is not working, communicate this to your attorney immediately.