

# THE MEDIATION OPTION

Divorce is a negative experience for virtually everyone. Fortunately, being given the opportunity to mediate is one aspect of divorce you can feel good about.

## WHAT IS MEDIATION?



Put simply, two parents sit down together with a mediator to talk about any issues which need to be resolved. The mediator is trained to help you identify and carefully consider options.

## THE MEDIATOR IS NEUTRAL.

He or she will **not** make the decisions or even give the Court a recommendation. The decisions are up to you. Mediation is an opportunity for **you** to assume control over your future and the future of your child(ren).

## WHAT'S THE PROCEDURE?

You have been **ordered** to attend mediation. The date and time is included in your Order. **THIS IS AN ORDER OF THE COURT AND YOU MUST ATTEND.** If all issues are resolved, you must **both** call the mediator at least 24 hours prior to the scheduled session to discuss the possibility of cancelling. In the event that mediation is scheduled for a Monday and all issues are resolved, both parties must contact the mediator no later than 5:00 p.m. the Friday prior to the scheduled session to discuss the possibility of cancelling. **Parties will be billed for the mediator's preparation time if adequate notice is not given or a party is a "no-show."**

The mediator will meet with you together to explain the process and answer your questions. If you believe it is necessary to meet individually with your mediator rather than jointly, prior arrangements must be made with the mediator directly. Once the process has been explained, you will roll up your sleeves, and hopefully work out an agreement that you both can live with.

Mediation may take one or more sessions, but national statistics indicate that 85-90% of couples are able to reach an agreement without going to Court.

Please be sure to make other arrangements for your child(ren). Children should not be brought to the mediation session.

## HOW ARE THE COSTS OF MEDIATION PAID?



Court approved mediators have agreed to limit their rates to no more than \$150 per hour.

The parties are responsible for the cost of mediation. However, if you qualify, the Court will help you pay for the costs of mediation based upon your income.

Your share of the mediation fees are to be paid at each session. For the first session, you should be prepared to pay at least \$75, which will cover

your half of a one hour session.

## WHY MEDIATION?

A child's parents are the two people best informed about his/her needs. You know your child(ren). You know your own schedules, personal quirks and needs. That means the two of you are in the best position to make reasonable and intelligent decisions about your future and your child(ren).

Your judge will tell you that no matter how much testimony is given, he/she will never be as knowledgeable about your situation as you are. Mediation provides the opportunity to work with a neutral professional to reach your own agreement.

## DO I NEED TO MEDIATE WHEN I HAVE AN ATTORNEY?

Your attorney plays an important role in your case. Because the mediator must remain neutral, the mediator does not give legal advice. That is your attorney's job. He or she can provide legal advice about the options you might consider in mediation. However, it's important to realize that ultimately the decision is up to you. That decision is best made after close consultation with your attorney.

Agreements people work out on their own are usually more satisfying than those that were negotiated by attorneys or

ordered by the Court. That's logical because an arrangement you had input in developing is just going to feel better. Also, agreements worked out in mediation are more often followed. That means you're less likely to find yourself back in Court because one of you did not follow the Order.

### **WHAT HAPPENS IF WE REACH AGREEMENT?**



Your mediator will put your agreement in writing (there will be an additional charge for drafting your agreement) and give it to you so you can review it with your attorney before signing.

Your attorney may suggest changes which you may want to discuss with the other party, either in another mediation session or privately. The mediator will revise the agreement, if necessary.

Once a final version is agreed upon, you will return to the mediator's office for a short appointment to sign the original agreement.

Your agreement will need to be put into a proposed Order and submitted to the Court for approval. You will need to decide in mediation which party or attorney will draft the proposed Order.

### **WHAT HAPPENS IF WE DON'T REACH AN AGREEMENT?**

In your Order there is a **Recall Date** for a hearing. If you do not reach agreement on **all** issues, you must go to Court and leave the decisions up to the judge.

### **WHAT CAN I DO TO HELP THE PROCESS WORK?**

There are many good books on mediation. Most do an excellent job of explaining the process and what you can do to make it succeed.

### **CAN I USE MEDIATION TO REACH A FINAL DIVORCE SETTLEMENT?**

Yes. If you are in the process of separating or divorcing, your agreement will likely address only temporary issues (that will only be in effect while your divorce is in process). However, there is nothing to prevent you from using mediation to work out the final decisions, too. You will need to work out your own payment arrangement with the mediator as the Court is unable to help with those costs at this time.

### **CONCLUSION**

Most people who have gone through the mediation process are happy they did so. They often report that they appreciated the opportunity to tell the other side how they felt. They also believed they better understood the other's fears and concerns.

The ultimate goal is to help you divorce or separate without destroying one another in the process. This is especially important when you have children. You'll have many occasions in the future to be together – school events, graduations, weddings, births of grandchildren. If you have been able to resolve your disagreements together with respect and dignity, those occasions will be happy for you and your child(ren) instead of events marked by tension and discomfort. Good luck!

