

FAMILY MEDIATION--HOW DOES IT WORK?

What is family mediation?

Family mediation is a confidential decision-making process in which a neutral facilitator assists parties in reaching informed settlement of questions arising from separation, divorce, or other family conflicts. Any decisions are made by the parties themselves, and no rights are waived.

What issues can be mediated?

The Family Court mandates mediation of most contested divorce cases in certain counties (including Greenville). Issues which can be addressed in mediation include parenting, child support and alimony, the division of assets and allocation of debt, pre-nuptial agreements, post-decree custody questions and other family issues.

Who participates?

Parties usually meet with a mediator in a series of conferences without attorneys present. If all parties and the mediator consent, attorneys may be present. Everyone who participates is bound by the confidentiality rules of the mediation process.

What role do attorneys play in family mediation?

The mediator encourages each party to consult with an attorney and, at a minimum, to have an attorney review any agreement before the agreement is signed by the parties and/or approved by the Family Court. Attorneys must prepare documents for court approval and for divorce proceedings and must participate in court hearings. The attorney's role will be determined by the attorney and the client, depending upon the services needed and requested.

What is included in the Agreement to Mediate?

The parties sign an Agreement to Mediate which provides for the confidentiality of the process, the agreement of both parties to produce records requested by the mediator, payment of the mediator's fees, and protection from subpoena or other involvement in litigation for the mediator.

What is the mediator's role?

A mediator facilitates discussion of issues but does not make decisions or recommendations. In divorce mediation, the mediator will have a general understanding of the history and breakdown of the marriage but will not address questions of fault. Although the mediator has an obligation to insure that a fair decision-making process takes place, the mediator cannot insure that the terms of an agreement are fair. The

mediator should terminate mediation if the parties cannot have a reasonably balanced discussion for any reason.

The mediator will focus discussion on planning for the future and will try to identify common interests of the parties. With the mediator, parents discuss various options and decide what plans will be best for their children and for them as parents. Using financial information provided by the parties, an information base is developed to determine appropriate arrangements for support, the division of property, and planning for future family needs, such as college education and retirement.

The mediator may suggest that certain questions be referred to an accountant, an appraiser, a therapist or another professional consultant--such as the tax impact of selling a home, the value of property, or planning for a handicapped child.

What training is required to be a mediator?

In South Carolina a family mediator must be a licensed attorney or mental health professional in good standing and must complete a 40-hour family mediation course to appear on a court-certified list of mediators. Mediation training, however, is available to anyone, and parties may select a mediator who is neither an attorney nor a mental health professional. Ethical standards prevent an attorney mediator from providing legal advice to mediation clients and prevent a mental health professional from providing therapy to mediation clients. Divorce mediators receive instruction in family law and will discuss principles of family law with clients in a general fashion.

How long does mediation take?

The complexity of issues and work done by the parties and their attorneys outside mediation will affect the time needed for mediation. Mediation sessions are generally scheduled in two-hour blocks of time to allow for full discussion of complex issues. Depending on the issues and the level of agreement by the parties, mediation can generally be completed in one to four two-hour sessions.

How much does mediation cost?

Mediators usually charge hourly fees which are shared by the parties. Arrangements for payment should be made in advance between the parties and with the mediator. Negotiation in mediation is usually less expensive than negotiation through attorneys. Mediation sometimes requires more time and work from the parties themselves.

When is mediation not appropriate?

Mediation is not appropriate if the parties cannot speak honestly and freely to each other, with the mediator's assistance, because of emotional instability, intimidation, or lack

of ability to understand the process. A history of physical abuse or substance abuse during the marriage should be disclosed to the mediator prior to beginning the process.

What are the benefits of mediation?

The children who adjust best to divorce are those who have substantial continuing contact with both parents and whose parents provide a healthy model for resolving conflicts. Mediation promotes these values and allows the discussion of family concerns and creative settlement alternatives which may not be considered by attorneys and in court decisions. Research indicates that the terms of mediated settlements are similar to court orders and attorney-negotiated agreements, although there tend to be more joint custody plans and more detailed parenting plans in mediated agreements.

Mediation is private and practical and gives clients control of the expenses and the timing of their negotiations. Mediated agreements help preserve relationships between parties and have somewhat better "staying power" than court-ordered structures or traditionally negotiated settlements. Attorneys provide a safety net for clients, and no legal rights are waived by participation in mediation.

RULES OF MEDIATION

1. The parties agree to notify the mediator at the first session if the history of their relationship includes physical abuse, alcohol or drug abuse, or severe emotional disorder on the part of either party.
2. All decisions made in the mediation process concerning legal issues and agreements between the parties are the responsibility of the parties. The mediator is responsible for the control of the process and offers solutions where appropriate. The mediation process will be conducted in the manner that the mediator believes will most expeditiously permit full discussion and resolution of the issues. The mediator will assist the parties in fully discussing and understanding each issue before agreements are made so that both parties arrive at solutions they deem fair and equitable. The mediator can terminate the process at any time he or she deems necessary or appropriate.
3. The mediator assumes that children have a right to love and respect both parents, and a right to have both parents participate in his or her life as fully as possible. Children of sufficient age or other persons having a direct interest in the mediation may participate in mediation sessions related to their issues with consent of both parties and the mediator.
4. The mediator will not give legal or financial advice. The mediator specifically urges the parties to obtain legal and other assistance necessary to make informed decisions.
5. Any agreements made in a session are not final until signed by a judge. Interim agreements may be made and serve as "good faith" guidelines; they are not binding unless signed by a judge. The mediator may nonconcur in an agreement made by the parties on any issue and so note the nonconcurrence on the final written agreement.
6. All communications, documents, and work notes made or used in mediation are confidential. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding, any oral or written communications having occurred in a mediation proceeding, including, but not limited to:
 - A) Views expressed or suggestions made by another party with respect to a possible settlement of the dispute.
 - B) Admissions made by another party in the course of the mediation proceeding.
 - C) Proposals made or views expressed by the mediator.
 - D) The fact that another party had or had not indicated willingness to accept a proposal or settlement.
 - E) Records, reports or other documents created solely for use in the mediation.

Through the adoption of these rules, the parties agree that they will not call the mediator as a witness in any litigation of any kind regarding these mediation sessions, and, in like manner, the parties shall be stopped from calling as a witness any neutral experts and other professionals involved in the mediation process.

7. Exceptions to confidentiality are as follows. Should the mediator become aware of child abuse, child neglect, suspicion of bodily harm, or violence to another person during the course of mediation, then the mediator is obliged as one dedicated to preserving the physical well-being of adults and the best interest of the child to report such abuse to the proper authorities. Threats of harm or attempts to inflict physical harm made during the mediation sessions shall not be deemed confidential.
8. The parties agree to fully disclose to the other and to the mediator all information and writings as requested by the mediator, including financial statements, income tax returns, etc., and all information requested by the other party if the mediator finds that such other disclosure is appropriate to the mediation process and may aid the parties in reaching a settlement. At the conclusion of the mediation process, the parties may find that attorneys will request further verification and disclosure in order to aid their review and implementation of their decisions in mediation and the parties agree to provide such information at the request of the other party. Likewise, at the conclusion of mediation, the parties agree to sign a notarized statement declaring that they have fully and truthfully disclosed all information concerning assets, liabilities, and income.
9. The preparation of budgets by each party is an essential part of the mediation process. If either party fails or refuses to prepare a budget adequately reflecting his/her needs, the mediator shall have the option of suspending mediation of related issues.
10. In addition to hourly charges for the mediation sessions, parties will be charged for the mediator's work outside of the mediation sessions, whether for the preparation of the mediated settlement agreement or for discussions with parties, their counsel, or with other persons concerning matters related to the mediation. Parties will also be charged for any long distance phone calls associated with their case and for necessary work processing work. Photocopying above that normally required with a typical mediation case will also be charged. Costs will be billed to the parties on an ongoing basis with payment due at the next mediation session or within thirty days, whichever occurs first.
11. Parties are asked not to communicate with their mediator outside of the working session about any issues of substance associated with the dispute. Procedural questions are permitted. Parties are encouraged to discuss with the mediator, either in sessions or in private, any concerns related to either their physical or emotional safety and well-being as it relates to the mediation process. Parties will be charged for the time the mediator spends in or outside the sessions dealing with the above issues.
12. At the conclusion of the mediation sessions the mediator will draft a detailed memorandum setting forth the decisions agreed upon by the parties in mediation. The Memorandum of Agreement will contain background information about the parties and will set forth the factual information relied upon by the parties in reaching settlement. The parties understand that these Rules will be incorporated into an Agreement to Mediate signed before beginning the mediation sessions.

AGREEMENT TO MEDIATE

This AGREEMENT TO MEDIATE is signed by the parties and the mediator to create and clarify the mediation relationship. This agreement reflects each party’s sincere intention to be fair and equitable during mediation and to provide full financial disclosure.

All parties understand that the mediator is a neutral facilitator and does not represent any party. The mediator does not provide legal or financial advice or psychological counseling. Each party is encouraged to retain independent legal counsel to review any written agreement reached in mediation.

By signing this AGREEMENT TO MEDIATE each party acknowledges receipt of a copy of the “Rules of Mediation.” They also acknowledge and agree to abide by these Rules. The Rules herein are incorporated as part of this AGREEMENT TO MEDIATE.

IN CONSIDERATION OF THE ABOVE:

- 1) The mediator will be compensated at the rate of \$150 per hour for actual Mediation sessions. Sessions will be scheduled in two-hour blocks unless otherwise agreed. Payment for mediation sessions will be made at the conclusion of each mediation session.
- 2) In addition to compensation for mediation sessions, the mediator will be compensated for work outside the mediation session, necessary word processing work, long-distance phone charges, and atypical photocopying needs associated with the mediation. Parties will be billed for such time on an ongoing basis with payment due at the next scheduled session or within thirty days, whichever occurs first.
- 3) The parties agree that they will each pay \$75 if an appointment is cancelled or rescheduled without 24-hour advance notice.

This AGREEMENT TO MEDIATE is signed by the parties and the mediator on this _____ day of _____, 2012.

Mediator

DIVORCE MEDIATION QUESTIONS

INSTRUCTIONS: Please provide all of the following information to the best of your ability, even though it may duplicate what the other party may provide.

1. Your Full Name: _____
Date of Birth: _____
Address: _____
City: _____ State: _____ Zip: _____
Home Phone: _____ Work Phone: _____
Cell Phone: _____
Continuous SC Residence Since: _____
E-mail Address: _____
2. Date of Marriage: _____ City & State: _____
3. Children:

Names(s):	Date of Birth:	Age:	Living With:
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Is there a dispute involving the children? Yes _____ No _____
4. Are you and your spouse living together? Yes _____ No _____
If not, please give the date of separation: _____
5. Are you employed? _____ Employer _____
Position _____ Employed Since _____
Salary _____ Years of Education _____
Continuous Employment Since _____
6. Is your spouse employed? _____ Employer _____
Position _____ Employed Since _____
Salary _____ Years of Education _____
Continuous Employment Since _____
7. Have you been married previously? _____ Date of Divorce: _____
Do you have children from a previous marriage? _____ Number: _____
With whom do the children live? _____
Do you pay child or spousal support? _____
8. Do you have an interest in reconciliation? Yes _____ No _____
9. Are you presently in therapy or counseling? Yes _____ No _____
If yes, with whom? _____
10. Attorney's Name: _____ Phone: _____
Address: _____
11. Are there joint bank accounts to which your spouse has access? _____
12. Does your spouse have credit cards for which you are responsible? _____
13. Who referred you? _____
Address _____
Do you have any objection to our acknowledging this referral?
Yes _____ No _____
14. Date you completed this form: _____