



State Bar of South Dakota

Mediating Disputes Regarding Children Following Separation Or Divorce

When is mediation required?

South Dakota law provides that "In any custody or visitation dispute between parents, the court shall, unless the court deems it inappropriate under the facts of the case, order mediation to assist the parties in formulating or modifying a plan, or in implementing a plan, for custody or visitation and shall allocate the cost of the mediation between the parties."

What is a mediator?

A mediator is an impartial professional; usually approved by the court, trained in problem solving, conflict resolution and child development. Usually, the parties select a mediator from the list of court-approved mediators.

What are the advantages of mediation?

- 1) Decision-making remains with the parents. When the parents have created the agreement, they are more likely to cooperate with its terms;
- 2) The parents work together to solve disputes regarding their children;
- 3) It is informal, quicker, private and less costly; and
- 4) The children's emotional well-being is greatly improved when parents cooperate and maintain a relationship with their children.

What does the mediator do?

The mediator provides a safe and impartial setting for parents to discuss issues and facilitates the discussion on co-parenting your children. The mediator begins with the premise that children need a relationship with each parent and the care of each parent.

What does mediation cost?

Each mediator has a set hourly rate for mediation. The cost of mediation is typically split equally between the parents and paid at the time of each session.

What issues may be mediated?

Practically any issue disputed between parents can be mediated including how much time the child spends in each home, vacations, out-of-state travel, church attendance, activity participation, medical/dental issues, education, etc.

Can what I say in mediation be used against me? The confidentiality of mediation is protected by a contract between the parties and the mediator. The mediator can be made to testify only under extraordinary circumstances. A mediator is prohibited from communicating information to any third party about the parents' behavior or statements. The mediator may report whether the parent appeared for the scheduled mediation session and whether the mediation was successful or not.

How long does mediation last?

In most cases, the mediation sessions last 1-2 hours and continue so long as the parents agree and progress is being made. When a parent lives elsewhere, sometimes longer mediation sessions are held for the convenience of the parties. The number of sessions needed to complete an agreement is influenced by the parents' cooperation and the difficulty of the issues.

What role do attorneys play in the mediation process?

Your attorney can prepare you for the mediation process and answer questions during the process. The mediator will prepare the parenting agreement. You will then have an opportunity to take the agreement to your attorney for review before signing.

What are the chances of mediation being successful?

Mediation succeeds when the parents cooperate on behalf of their children, rather than compete for them. Parenting plans work best when both parents participate and agree to the co-parenting arrangement. Mediation has been very successful in minimizing the trauma of divorce on the parents and the children.

What happens after the mediation agreement is signed?

Each parent will receive a signed copy of the mediation agreement. One of the attorneys will submit it to the court for approval.

What if mediation fails?

The court may then order a child custody evaluation where an expert makes a recommendation as to what is in your child's best interest. Methods used include home visits, individual and family interviews, testing, verification of various records, talking to professionals and personal references and reviewing legal documents.

If you have any problems or questions regarding mediation, you should consult an attorney with expertise in family law.

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