

# Frequently Asked Questions About Family Mediation

## What is mediation?

"Mediation" means a process in which the parties appear before an impartial third party who has no authority to adjudicate the dispute but who, through the application of standard mediation techniques generally accepted within the professional mediation community, assists the parties in identifying the issues, and then interests, exploring settlement alternatives, and fashioning the basis of an agreement.

## What is family mediation?

"Family mediation" means the mediation of disputes in actions for divorce, annulment, establishment of paternity, child custody or visitation, or child or spousal support.

Mediation programs can be very beneficial to people who are divorcing as well as to those who have long been divorced but who find themselves in a dispute in their post-divorce relationship. Not only can it save money but it promotes positive dispute resolution rather than adversarial procedures. That being so, it is well worth investigating by any couple facing divorce, a child custody fight, a visitation dispute or other interpersonal conflict.

Mediation is a process that may help you resolve your case so you can have an uncontested divorce. Mediation is particularly useful in situations involving children, since it is in the interests of the children that their parents "get along" even if they will no longer live together as a couple.

Mediation attempts to change disputes from "win-lose" to "win-win." Mediation is a non-adversarial process of helping people come to agreement on issues like parenting arrangements, support of children and spouses, and division of real and personal property. Mediation occurs when a neutral third-party who has training in dispute resolution, assists you and your spouse and helps you resolve the issues that are causing conflict and to make cooperative, informed decisions.

## When can family mediation be used?

Mediation can be used to resolve the entire range of family disputes either before a divorce takes place in order to consummate a marital settlement agreement, as well as after the divorce to resolve continuing disputes that might arise under a marital settlement agreement.

## Who does family mediation in New Jersey?

There are private mediators who earn their living by providing mediation for divorcing couples. These mediators can be invaluable in helping couples resolve property and support issues as well as with regard to custody and visitation. Divorce attorneys and family counselors can often refer families to family mediators.

## Should I have an attorney?

It is helpful for parties to have an attorney, whether or not the attorney participates in the mediation sessions. Parties will be advised by the mediator to seek advice from their attorneys and it is recommended that an attorney review the final settlement agreement. Mediators may not give legal advice to the parties.

## Are mediated agreements binding?

A mediated agreement which is signed by the parties is a contract, and as such, is binding. Some mediated agreements are incorporated as part of the parties court order.

## What are the advantages of mediation over litigation?

- Studies show that families who mediate their differences have a substantially better after-divorce relationship than families who litigate their differences.
- Mediators use a variety of negotiating techniques to help parties reach a mutually agreeable solution to their differences. The final decisions are the parties, not the mediator's, because both have had a say in how to deal with the issues that are important to them. In divorce mediation, the couple controls how and when decisions get made, rather than attorneys and judges.
- Mediation is usually less expensive than fighting a costly court battle. As you will see from the brief description of contested divorces below, adversarial trials are very expensive, with the cost of attorneys, expert witnesses, and time taken away from more positive pursuits. If you can successfully resolve all of the issues in your case, from property division, child support, to custody, you will be many dollars ahead. Hourly mediation rates from private providers range from \$110 to \$245 per hour.
- Using mediation can speed up your case. In a traditional court setting, trials can stretch for many months or even into years.

## Is mediation confidential?

One of the advantages of mediation is that it is confidential. The emotional and perhaps embarrassing issues that are raised in divorce and child custody difficulties will be kept private, as opposed to a trial where all of the proceedings are part of the public record. They are also confidential, meaning that the process doesn't become part of the public record as does a court tried divorce case. This is especially important when the mediation concerns children. The adversarial nature of a divorce trial can severely strain the ability of parents to communicate with each other and their children. Dealing with custody, visitation and child support in mediation can often short circuit much of the bitterness and support positive family interaction. This can really help the children who usually want a close bond with both their mother and father.

## What happens if we can't agree?

If you don't reach agreement, you can still go to court. You do not give up your right to litigate your dispute. What has occurred in mediation is confidential and is not admissible in court or through discovery. In a court-ordered mediation, the case will return to the court for a decision by the magistrate or judge if the two parties cannot reach an agreement.

