



The Law Office of Amber Boles, PA

WHAT IS MEDIATION

Mediation is a procedure designed to assist separating couples (as well as families) in conflict, to reach an agreement between themselves, privately, confidentially and informally. It employs the skills of a neutral and impartial third party, called a mediator, who assists the individuals to make their own decisions by providing necessary information, clarifying issues, helping them explore alternative solutions, and suggesting possible compromises. Issues mediated may include custody, visitation and child support; alimony or spousal support; division of assets; and the tax impacts of various alternative decisions.

GOALS OF MEDIATION

1. To reduce anxiety and the other negative effects of the conflict and/or marital dissolution by empowering the parties involved to devise a cooperative resolution that best fits their needs and those of their children.
2. To prepare the parties to anticipate and ultimately accept the consequences of their own decisions.
3. To promote an agreement or plan for the future which all parties involved can accept.

PROCESS OF MEDIATION

1. Reduce the problems and promote communication of both parties. Maximize the exploration of alternatives.
2. Address the needs of all parties involved.
3. Provide a model of future conflict resolution.

ADVANTAGES OF MEDIATION

1. Minimizes the potentially traumatic emotional and psychological effects of the adversarial process.
2. Discussion can proceed quickly. An agreement is often reached in a matter of one or a few sessions.
3. Much less expensive than traditional litigation proceedings.
4. Structured to keep the best interests of the child in the forefront of the discussion and for everyone to be a "winner" in some sense.

WHAT MEDIATION IS NOT

1. It is not therapy.
2. It does not circumvent the legal system as both parties are encouraged to seek individual legal counsel at appropriate times.
3. It is not primarily educational, but rather it is an interactive process with its primary focus on decision making, arriving at a memorandum of understanding and the development of a plan of action for the future.

Mediation is **NOT** arbitration. In arbitration, the couple authorizes a neutral third party to decide on a binding resolution on the issues. In mediation the couple, not the third party, decides on the agreement that will govern the parties' relationship with each other in the future.

Mediation is **NOT** conciliation. People often use the two terms interchangeably; however, conciliation is a process where the couple meets with a neutral third party in an effort to work out the marital problems in order to continue the marriage. Mediation takes place after the parties have agreed that the marriage is over or when the parties want to make a plan for reconciliation.

WHAT IF MEDIATION FAILS

The statements you make and the information you share during the mediation is confidential. The Florida Statutes provide that the mediator cannot be forced to testify. If the parties cannot agree, the mediator will notify the Court that an agreement is not possible without further comment and or recommendation.

HOW MEDIATION WORKS

The process of Mediation begins either by an order of the Court or by agreement of the parties. The mediator, though neutral and objective, plays an active role in the mediation by assisting the parties in working towards their own settlement agreement.

The parties are educated in regarding what information is needed to achieve a fair agreement. The mediator clarifies and organizes details, prompts discussion and cooperative communication as well as manages conflict. The purpose of the mediator is to help the couple identify issues, develop bargaining proposals and conduct negotiations, with the goal in mind of coming to a settlement that best suits their own needs.

During the mediation, such skills as managing conflict, referring the parties out for expert opinion or advice, and sometimes simply being the voice of reason will be used by the mediator. Throughout the mediation, the mediator's function is to keep the parties task-focused, and mindful of the purposes, and procedures and scope of mediation.

The mediator **DOES NOT** make any decisions for the parties, but facilitates the couples own decision-making processes. When the issues have been resolved, the mediator will draft a memorandum of agreement. After review and approval of the parties, it is given to their attorneys for legal implementations.

ROLE OF ATTORNEY

The mediator's role is neutral and not a substitute for independent legal advice. The mediator does not represent either party, but focuses on helping the parties reach their own agreement. Each party is urged to seek independent legal counsel throughout the mediation process. While the decisions reached in mediation are made by the parties, it is important that they should be informed decisions.

Attorneys may attend the mediation and the parties shall at all times be permitted to privately communicate with counsel. Alternatively, parties can meet with mediator without an attorney to settle their issues. However, the mediator cannot represent or provide counsel to either party, they must remain neutral.

Upon completion of the mediation, the mediator will submit the memorandum of agreement to the parties' attorneys. If necessary, the attorneys will draft a settlement agreement from the terms of the memorandum for filing with the Court.

COSTS OF MEDIATION

The mediator's fee is usually determined on an hourly basis. Both parties are encouraged to share in the expense. The Court may set the fee and who shall be responsible for it when it orders mediation. The important thing to remember is that mediation can be, and frequently is, less expensive – both financially and emotionally.

WHO CAN USE MEDIATION?

Mediation is for parties who are looking to settle their legal issue or have made the decision to dissolve their marriage and who cannot agree on any or all of the many issues involved in the dissolution of marriage. Occasionally, mediation is used if the parties decide to separate for a period of time, which separation might result in dissolution. Frequently parties have found mediation valuable in resolving differences after dissolution has been rendered. The post-dissolution problems usually involve issues that relate to children or alimony.

WHO CAN MEDIATE

The Florida Supreme Court has established guidelines for certification as a Mediator of Family and Dissolution Issues. These qualifications are set out in Rule 1.760(b), (1), (2), (3) and (4), Florida Rules of Civil Procedure as set forth below:

1. Have a Masters Degree in social work, mental health, behavioral or social sciences; or be a physician certified to practice adult or child psychiatry; or be an attorney or a Certified Public Accountant licensed to practice in any United States jurisdiction; and
2. Have at least four years practical experience in one of the above mentioned fields; and
3. Have completed a minimum of forty hours in a mediation training course certified by the Florida Supreme Court; or have received a Masters Degree in family mediation from an accredited college or university; and
4. Have been certified by the Chief Judge of the Circuit pursuant to Florida Statute 44.304(3).