

Family Mediation: A How-To Guide

In Need of Family Mediation? Get your questions answered below.

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What is family mediation?

Family mediation is a process in which a mutually-chosen and/or court-appointed neutral third party facilitates communication between people to promote settlement. It is an alternative to asking the court to decide the outcome of family disputes. The family mediation process provides a way for you and someone with whom you have a conflict or dispute to sit down and talk. With the assistance of a neutral, you and the other person will be given the opportunity to define problems and issues that need to be decided, figure out your needs and how they can be best met, address and possibly resolve problems, decide certain issues, and come to a mutually satisfactory agreement. Family mediation encourages communication so that you and the other person will be able to work together more effectively and solve future concerns, such as co-parenting, on your own if necessary. If you and the other person resolve the conflict and create an agreement, the agreement can be incorporated into a court order.

Family Mediation is:

- **Voluntary**

- **Confidential**
- **Self-determined**

When is mediation a good choice for family matters?

Mediation may be a good choice for family matters:

- Before you separate
- Before, during, and after the divorce process
- When you want to end a significant relationship with someone that you are not married to
- When ending a relationship with someone with whom you have children or own property that needs to be divided
- After the divorce decree is final and problems arise
- To make decisions about how to share time with children
- When you need to discuss child support
- When you need to decide about parenting responsibilities such as:
 - child rearing styles,
 - disciplinary decisions,
 - access to medical and school records,
 - choices about schools,
 - notice of school performances and conferences,
 - scheduling time with the children including weekdays, weekends, vacations, holidays, birthdays and other special times,
 - clothes and extracurricular activities,
 - working out grandparent visits,
 - telephone calls,
 - transportation and costs, and
 - blended family issues
- When you are discussing spousal maintenance
- When you have property to divide (your home and what's in it, cars, boats, etc.)
- When you have credit card debt to divide
- When you have checking and savings accounts, pension plans, mutual funds, money market funds, stocks, bonds, other investments and financial assets to divide

When is mediation not a good choice for me?

Mediation may not be a good choice for you if:

- You or your children have been verbally, physically, emotionally or sexually abused by the other person
- You do not feel safe, for any reason, in mediation sessions
- You are afraid of the other person
- The other person is intentionally trying to cause you emotional pain
- You or the other person are too depressed to make good decisions

- You don't trust the other person to be fair or honest
- You don't trust yourself to be fair or honest
- You or your therapist believe you are not mentally or emotionally able to mediate
- You or the other person abuse drugs or alcohol
- You feel the mediator is not treating you or the other person fairly
- You have a lot of trouble making decisions for yourself
- The other person is trying to keep the conflict going to maintain a connection
- The other person is acting like a martyr
- For whatever reason the other person does not want to end the conflict
- If you believe that you and the other person have different levels of power

It is important to note that the court cannot order you to mediate if you are in an abusive situation!

Should I mediate if I am in an abusive situation?

If you are in an abusive situation, *before you consider mediation*, thoroughly talk with someone you trust about the risks and benefits of mediating, like a:

- Domestic abuse counselor
- Advocate
- Therapist or counselor
- Lawyer experienced in family matters and domestic abuse
- Religious or spiritual counselor
- Domestic abuse advocate

When you meet with a trusted individual, give that person as much information about your situation as you can by giving facts and recent details, including:

- the effects of the abuse on you and the children,
- that you have or want an order for protection,
- whether you want to mediate or not, and
- what protections you need if you do want to mediate, such as a sheriff, advocate or other person with you during mediation.

If you are in an abusive situation and you still wish to mediate, it is a good idea to ask the mediator some questions first. Some mediators will not work in situations where they know abuse is a problem. You can ask the mediator the following questions, and any other questions you feel you need to ask:

Do you mediate cases where there is domestic abuse? If not, do you know someone who does?
 What kind of training have you had in mediating domestic abuse cases?
 When and where did you take that training?
 How many cases have you mediated where there has been domestic violence?
 What happened in those cases?

What questions will you ask the abuser before the first mediation session?
If the abuser denies there is abuse, what do you do?
What do you need to ask me about this situation?
What do you see as the risks and benefits of mediation where there are control, abuse and violence problems?
Can I have someone with me during mediation like an advocate or a therapist?
Can that person be in the room with me at all times?
How do you reduce the risks to me?
How do you promote safety for me?
How do you promote safety for everyone else who participates in mediation?
If there is an order for protection in place, will you mediate?

As an alternative to mediation, what other choices do I have?

Mediation is not your only choice. There are other options you may wish to consider. All involve different costs, risks and benefits that you should check into before you decide. Some of those options are:

- Negotiate with the other person on your own without a mediator
- Negotiate with the other person with the help of a family member, trusted friend, etc.
- Attend an Initial Case Management Conference (ICMC) with your judge
 - See more about ICMCs at <http://www.mncourts.gov/?page=3946>
- Participate in Social Early Neutral Evaluation (SENE) or Financial Early Neutral Evaluation (FENE)
 - See more about SENE and FENE at <http://www.mncourts.gov/district/4/?page=1747>
- Work with a Parenting Consultant (PC) or a Parenting Time Expeditor (PTE)
 - See more about PCs and PTEs at <https://mediationcentermn.org/resources-professionals/>
- Go to trial and represent yourself
- Go to trial with a lawyer
- Hire an appraiser for some or all of the property
- Hire someone impartial to give an opinion about issues and then use those opinions to negotiate with the other person
- Take your dispute to arbitration (In arbitration, you and the other side sit down with a third person who will decide your case for you. That person can decide some or all of the issues. This is more like going to court because someone else makes the decisions for you.)

There are other methods available in Minnesota courts to help you resolve your conflict. You will need legal advice about these methods and how each would work for your situation.

How do I find a mediator?

There are many different ways to find a mediator. You can ask someone you know and trust for a referral, such as family, friends or neighbors. You can ask an attorney, your therapist or social worker, your probation officer or the local court services clerk, or you can ask your religious or spiritual counselor (pastor, priest, rabbi, etc.). Make sure that you ask for a referral from someone who has had a good experience with mediation, ask a professional who is familiar with mediation, or use lists or referrals from an agency or mediation group.

You don't need to hire the first mediator you find. You should get a few names of mediators, talk with each mediator, compare the information you get from each mediator, consider how you felt when talking with each mediator and make sure that you feel comfortable with the mediator you finally choose.

How are mediators trained?

The state of Minnesota does not license or certify mediators. Minnesota law does not require mediators to take any kind of training. Minnesota does have a list of mediators and other neutrals, called the Minnesota Statewide ADR Rule 114 Neutrals Roster (or the Rule 114 Neutrals Roster), who have taken a certain amount of training. To be on the Rule 114 Neutrals Roster, family mediators must take training that has been approved by the Minnesota Supreme Court. To meet that requirement, most family mediators take a 40-hour basic course in mediating family matters that includes information on domestic abuse, ethics and family dynamics. Some mediators first take a 30-hour basic course in mediating civil cases, then take a 25-hour course that covers information about mediating family cases. To stay on the Rule 114 Neutrals Roster, a mediator must take 6 hours of additional training each year. Although some basic training courses include information on domestic abuse, a mediator can take an additional 6-hour domestic abuse screening course. Mediators have backgrounds in different professions, trades and lines of work. They are not required to have any other training or experience.

What questions should I ask before I hire a mediator?

You may want to ask questions in addition to those on this list. Do not be afraid to ask a lot of questions; you have the right to interview someone you might hire. The more information you have, the more likely you will feel comfortable with your final choice of mediator. If you are comfortable with the mediator, you are more likely to feel comfortable during the mediation session.

To ensure that the mediator will be neutral and has had some kind of training you can ask:

- Do you know the other person involved in this conflict socially, professionally or any other way?
- Do you have any financial ties to any of the people involved in the dispute?
- Have you ever done mediation for that person?
- Have you ever done any other kind of work for the other person?
- Would you ever do work for that person after the mediation is over?

Does your employer or organization do any work for the other person?
When did you take your basic course in mediating family matters?
What training have you had in screening domestic abuse matters?
Since your basic course, how many hours of mediation training in family matters have you taken?
How many family matters have you mediated?
How many years have you been mediating?
How has your training and experience prepared you to help us work out an agreement to our dispute?
Do you have other work experience? If yes, what is it? Who do you work for?
Are you licensed in another profession? If so, what profession?
What is the phone number of the Minnesota agency that licensed you?
What is your license number?
Have you ever had a professional license suspended, restricted or taken away? If yes, when and why? Did you get it back? If so, is that license now current and unrestricted?
Has the Supreme Court ever taken any action against you in response to a complaint?
Has any professional organization ever disciplined you? If yes, when, how and why? What is the organization's name, address and phone number? Do you have a copy of the report? If so, may I have a copy?

Mediators have different styles and practices. You can ask:

Do you work alone or with another mediator? If you work in pairs, how do you charge?
Which mediator code of ethics do you follow and will you send me a copy?
Do you schedule the mediation sessions based on my particular situation?
Can you handle any special physical needs I have and how?
How will you handle it if I want to have a support person with me?
How do you conduct mediation sessions?
Do you give an orientation and what does it include?
Do we sign an agreement to mediate and if so, can I have a copy before mediation?
Do you encourage parties to talk directly with one another?
Do you keep us in separate rooms?
Do you ever talk separately with either person in a private meeting during mediation? If so, why and how?
How do you decide when to talk separately with each person?
Do you write up mediated agreements? If so, can I see a sample of one you have done before I hire you?
If you do not write up mediated agreements, how do I go about getting my agreement written?

In the event that the mediation programs are sponsored by a community of faith or are community based, you may want to ask:

How long has your program been mediating family cases?
How many family mediation cases has your program done?

How long have you been in operation?
How will you choose a mediator for my case?
Do your mediators work in pairs?
How are the mediators supervised?
Do your mediators charge or are they volunteers?
What training and experience does the mediator have who will take my case?
How do you select mediators for your program?
Are your mediators on the Minnesota Statewide ADR Rule 114 Neutrals Roster/Family list?
Do you have insurance for your mediators and if so, in what amounts?

How do mediators get paid?

Usually mediators are paid by the two people or “sides” in the dispute. Often each person pays half the cost of the mediator but you can ask the mediator to include the cost as a topic to be talked about during mediation and you may decide to split the cost based on your incomes or any other way that both of you see as fair.

Unless otherwise agreed to by the mediator, the mediator usually gets paid at the end of each session. Most mediators charge by the hour. Most have a set hourly fee. Some mediators have a “sliding scale” and charge according to your ability to pay. Mediators should not charge a percentage of the value of your property and incomes. Other than the hourly rate, some mediators may charge fees for working in pairs, to cover administrative costs and overhead and for time to write up your agreement.

It is advisable to ask any mediator the following questions:

How much do you charge and when do I have to pay you?
How does your billing system work?
Do you charge for drafting the agreement or for administrative time?
Will you make arrangements for a payment plan?
Do you reduce your fees or have a sliding fee scale?
Can each of us pay based on our own income?

If you have tried to find a mediator, but cannot find one you can afford, ask the judge or court administrator where to find an affordable one, use the court sponsored program in your county, or ask if the judge can help settle your case.

What do mediators do before the first mediation session?

You may be asked to fill out forms to gather the following information:

- Your name, address and phone number
- Where you work
- Days and times of day you could attend mediation session(s)
- Financial status, such as income, expenses, debts, assets

- Names and ages of children, where and with whom they live
- Health and other insurance information
- Information about the issues you want to cover in mediation

Most mediators will tell you:

- About their education and training
- About their mediation experience
- About any other professional experience they may have
- What they charge
- Whether they mediate alone or with another mediator
 - They should provide a reason why they mediate with another person
 - Provide different skills and experience
 - Offer a female/male balance
 - Train a new mediator

Most mediators will:

- set up a neutral place to mediate,
- contact the other person, explain the mediator's services and ask him/her to participate, and
- schedule the mediation at a time that works for all of you.

What can I expect in a mediation session?

The mediator will give some kind of orientation at the first session. Even if you received some of the same information over the telephone, most mediators will talk about:

- The ground rules for mediation sessions
- Their training, experience and charges
- An explanation of mediation and why it is confidential
- How no one, not even the court, can force the mediator to repeat what either of you said during mediation
- The schedule for sessions
- Each person's responsibilities and the agreement to mediate
- Any concerns and questions you have about the process you are about to go through

After the orientation session, if you all agree, some mediators may talk separately with each person. That private meeting may be called a caucus. In mediation, a caucus is a private, confidential discussion between the mediator(s) and one "side" or person involved in the conflict. A mediator:

- May have a caucus with you or the other person, one at a time
- May have several caucuses with you or the other person throughout the mediation
- Should never tell the other person what was discussed during a caucus with you unless you tell the mediator it is OK to do so

- Should never tell you what was discussed during a caucus with the other person unless that person tells the mediator it is OK to do so

A mediator uses a caucus:

- To give you a chance to say anything you want
- So you won't be nervous about saying things in front of the other person
- When emotions are running high or they get in the way of working toward an agreement
- When you need help identifying the issues or developing your questions
- When you need the mediator to help you think about how you are negotiating
- To get information you may not yet have provided

Some mediators will welcome the opportunity to meet with each of you separately. You can ask to have a private caucus whenever you feel you need to.

How can I prepare for mediation and negotiation?

Before coming to the first mediation session, it is a good idea to:

- Take the time to gather all the information you will need to resolve all the issues
- Identify your needs in the following areas and be prepared to tell them to the mediator:
 - Financial, real estate and property needs
 - Parenting needs and needs of your children

How do I determine what I need to put in a mediated agreement?

You should figure out how much it costs you each month for the following kinds of expenses. You also need to know how much of each amount is spent on your children.

- Housing and utilities
- Food and clothing
- Life and health insurance premiums, as well as insurance co-payments
- Medicines and prescriptions
- Car payments, insurance and gas
- Child care, day care, school tuition and fees
- Child support and/or spousal maintenance
- You need to have information about the following, including account and policy numbers, balances, beneficiary names, policy limits, and who owns each account, fund or policy:
 - Checking and savings accounts, as well as certificates of deposit
 - Accounts that have stocks or bonds
 - Money market accounts and mutual funds
 - Retirement funds and all other investments
 - All insurance policies, including life, health, property, car, etc.
 - The cash value, if any of any insurance policies

It is a good idea to know in advance how you would like to divide things. Be open-minded about other ideas that come up during mediation, but be ready to tell the following about how you would like to see things divided:

- The value of your home and any other real estate and how you figured out the value for each
- The value of your household goods and how you figured out that value
- How you want to divide each piece of property and the household goods and why

It is also advisable to know before mediation what kinds of decisions you want to make about the children. Take time to figure out what issues need to be resolved, and have some ideas on how you want to decide on them. Be prepared to explain how you decided, and again, be open minded to new ideas that may come up during mediation. Examples of parenting issues that may need to be decided include:

- Where the children will live
- What child rearing style and value system will be used and how the children will be disciplined
- How each parent will get to see the children's medical and school records
- How to share notice of school performances and conferences
- How to schedule time with the children, including weekdays, weekends, vacations, holidays, birthdays, and other special times
- How the visitation schedule will work with the children's school, social, and religious activities
- Whether the children will have any type of religious or spiritual upbringing and if so, what type?
- How time with grandparents will be handled
- How you will handle telephone calls with the other parent
- Transportation arrangements, including costs
- How you will make decisions, including major medical decisions
- How you will resolve problems in the future

Mediation works best if you both come to the session willing to:

- Work to create solutions
- Accept that you are going to have to give in order to receive
- Work to control your emotions so that you can think clearly
- Tell the truth and give accurate information
- Give all the information needed to solve problems and reach agreement
- Treat each other respectfully and fairly
- Listen carefully and communicate clearly
- Ask lots of questions
- Remember that you are acting on behalf of your children, who cannot negotiate for themselves

When in mediation, you should try not to:

- Make unreasonable demands or be inconsiderate of the other person
- Ignore the other person's needs
- Be rude or lose your temper
- Overestimate your needs or underestimate the other person's needs
- Hesitate to ask questions or be too scared to negotiate what you or your children need
- Make promises that you cannot keep
- Lie or exaggerate
- Pass up what's in your own or your children's best interests because of past conflicts
- Let the other person intimidate you or intimidate the other person
- Agree to anything that you don't feel safe with
- Expect the mediator to give you legal advice, therapy or counseling
- Think your way is the only way

If I mediate do I still need a lawyer? How do I find a lawyer?

Before or during mediation it is a good idea to consult with a lawyer to learn more about your legal rights and responsibilities concerning:

- Child custody and visitation, child support, child care and/or paternity
- Spousal support
- Pension or property division and health insurance
- Any agreements you may make in mediation

It is advisable to have a lawyer look over any agreement to make sure that it includes things required by Minnesota law. You may want to talk with a lawyer throughout mediation – talking with a lawyer may help you decide what is best for you and your children. **While many mediators are lawyers, they are unable to give legal advice to individuals as mediators.** There are many ways to find a lawyer who practices in family law, including:

- Ask friends, family, neighbors, or co-workers
- Ask your therapist, counselor, social worker, probation officer, pastor, rabbi, etc.
- Internet search for family law lawyers
- The yellow pages section for family law or divorce lawyers
- Lists from the following professional organizations or referral services:
 - **Statewide Resources**
Minnesota State Bar Association Attorney Referral Service:
 - 1 (800) 292-4152
 - <http://www.mnfindalawyer.com/>
 - **Twin Cities Metropolitan Area Resources**
Attorney Referral Service of Ramsey County:
 - (651) 224-1775
 - <http://www.ramseybar.org/attorney-referral-service/>

Hennepin County Bar Association Attorney Referral:

- (612) 752-6666
- <http://www.hcba.org/?page=LawyerReferralHome>

Dakota County Bar Association Referral Service:

- (952) 431-3200
- <http://dakotalegal.org/>

Anoka County Bar Association of Minnesota:

- <http://www.anokabar.com/members>

Tubman (helps people with domestic abuse and family law issues in Hennepin, Ramsey and Washington counties:

- (612) 870-2426
- <http://www.lawhelpmn.org/organization/tubman/family-law/divorce-dissolution>

○ **Statewide Legal Services Programs**

Immigrant Law Center of MN (oficina legal):

- (651) 291-0110 / (800) 223-1368
- <http://www.ilcm.org/>

Legal Assistance to Minnesota Prisoners (LAMP):

- (612) 625-6336
- <http://web.wmitchell.edu/legal-practice-center/client-representation-clinics/lamp-legal-assistance-to-minnesota-prisoners/>

Minnesota Volunteer Attorney Program: (612) 333-1183

○ **Twin Cities Legal Services Programs**

Legal Aid Society of Minneapolis:

- (612) 334-5970
- <http://mylegalaid.org/>

Judicare of Anoka County:

- (763) 783-4970
- <http://www.anokajudicare.org/>

Legal Assistance of Dakota County:

- (952) 431-3200
- <http://www.dakotalegal.org/>

Southern MN Regional Legal Services (SMRLS):

- (952) 440-1040 (Carver and Scott Counties)
- (651) 222-5863 (Ramsey and Washington Counties)
- <http://www.smrls.org/>

Volunteers Lawyers Network:

- (612) 752-6655
- <https://www.vlnmn.org/>