
What is Mediation ?

Answers to frequently
asked questions

What is mediation?

Mediation is an informal way to resolve disagreements. A neutral person, the mediator, helps those involved:

- determine the important issues in a disagreement,
- explain and understand each others' needs,
- clear up misunderstandings,
- explore creative solutions,
- reach acceptable agreements.

The mediator does not tell people what to do or make judgments about who's right or wrong. The decision-making stays with you.

Why use mediation?

People choose mediation for many reasons - some of them are:

- Mediation can be less confrontational than dealing with the issues in litigation or in front of a judge.
- Mediation offers privacy and confidentiality and provides a respectful and cooperative environment in which to make important decisions.
- Mediation can save time and money.

What can be mediated?

Just about anything can be mediated when people are open to solutions. Some issues that are well suited for mediation are:

- Co-parenting plans for children, (includes time sharing, communication and making decisions about the children),
- Property and debt division in divorce cases,
- Disputes in small claims cases,
- Concerns in Child in Need of Aid cases,
- Concerns in adult guardianship and conservatorship cases.

It's up to those involved to decide what issues to mediate.

Can we mediate before we file a court case?

Yes. In fact, many people avoid a contested case by going to mediation before filing a case with the courts.

For example, a husband and wife planning a divorce might use mediation to discuss the division of their property or a parenting plan for their children. If agreements can be reached on all issues a dissolution can be filed instead of a contested divorce.

In another example, parents needing to modify a custody or support order from years ago may engage in mediation before filing a Motion to Modify. This may help to reduce family stress and bring about a faster resolution than could be reached in an extended court battle.

If we have a court case open, does the judge need to know we are also in mediation?

Yes. The judge may then be able to give you time to work through the mediation process before setting a trial date.

Is what we say in mediation confidential?

Civil Rule 100 and Probate Rule 4.5 state that mediation discussions are confidential when the court orders mediation. This allows open and honest communication without worrying that what you say will be used against you later.

If mediation is not ordered by the court it still may be confidential. Most mediators have a written confidentiality agreement that is signed before starting mediation. An explanation of the confidentiality agreement should be given by the mediator, including any limits on confidentiality.

How long does mediation take?

It can take from one hour to many hours - one session to several. It depends on:

- the number of issues to mediate,
- how much you disagree
- how open you are to try to work things out,
- your emotions,
- how well you can communicate.

What if one or both of us have attorneys?

Mediation can still occur, but a decision will have to be made as to whether the attorney(s) will attend.

Legal advice before or after a mediation session can be very valuable in understanding your legal rights and responsibilities and in developing options for settlement. If you are representing yourself in the court case, talking with a lawyer about the agreements you are reaching in mediation is worth considering.

What happens when an agreement is reached in mediation?

The agreement is written down and signed by everyone involved.

If you have a lawyer, ask the lawyer how this will be handled. Once the agreement is written and signed, the lawyer will file it in court for the judge to finalize if it involves a court case.

If you do not have a lawyer, ask the mediator how this will be handled. Once the agreement is written and signed, you will need to decide who is responsible for filing the agreement if it involves a court case.

What happens if we don't reach agreement?

Even if mediation doesn't immediately settle all the issues in a case, it can help focus the parties on the issues and may aid in settlement of the case later. Mediation may move your case more efficiently through the court by narrowing the issues of disagreement and prioritizing your goals.

Should we mediate if there's been domestic violence between us?

Mediation may not be appropriate when there has been domestic violence between you and another person in the case.

If you are considering mediation with a person who controls or attempts to control you through force, intimidation or the threat of violence, you should request a private session to discuss this with the mediator.

If you are a victim of domestic violence, you cannot be required to participate in mediation if you do not want to. Mediation in cases involving domestic violence must be provided by a mediator who is trained in the dynamics of domestic violence to protect your safety and the safety of your household members. As a victim of domestic violence, you are entitled to bring a support person or advocate to the mediation, including a lawyer. (See Alaska Statutes Sections 25.20.110 and 25.20.080).

What does mediation cost?

Mediators charge different rates. Ask the mediator what he or she charges.

Some courts offer mediation for certain cases at little or no cost. Contact your local court to see if these services are available.

How do we get into mediation?

If you have an open court case, there are two ways:

1. You can agree with the other side to mediate, or
2. You can ask the judge to order mediation.

You usually choose your own mediator and pay him or her. Or, in those courts that offer mediation programs for certain cases, you will need to follow the local procedure to sign up. Contact your local court to learn more.

If you do not have a court case, you simply choose a mediator and make arrangements with him or her.

How do we find and choose a mediator?

Unless you are participating in a court sponsored program, call around and talk to mediators until you find someone you want to work with.

Please note that in Alaska, anyone can act as a mediator. There are no state standards or licensing requirements. Mediator education, training, experience and style vary. It is up to those involved to decide what they need in a mediator and to select the mediator with the necessary skills and approach. To help parties choose a qualified mediator, the Alaska Judicial Council publishes a free guide to selecting a qualified mediator:

Consumer Guide to Selecting a Mediator.

Other resources to help find a mediator:

- The Alaska Dispute Settlement Association (ADSA) maintains a directory of mediators on their website.
- The *Alaska Directory of Attorneys* provides a list of mediators under the “Alternative Dispute Resolution” tab. The directory is available at many public libraries in Alaska.
- The Association for Conflict Resolution has a mediator referral service on its website.
- Check your local phone book yellow pages listings under Mediation.

For more information about this publication, please call the
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