

## District Court Mediation Program

A service of the Polk County Bar Association

Serving Iowa's Fifth Judicial District

# Preparing Yourself for Mediation

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This pamphlet is designed to help you get the most from your mediation experience. Mediation is your opportunity to reach your own solution with the help of a problem-solving expert, the mediator. The mediator is experienced in family law matters and is trained to help you find solutions to problems you face.

People usually come to mediation at their worst – after a lengthy period of struggle in their personal relationships. Mediation presents the opportunity to move you from your worst to something much better. Mediation allows you to discuss what is important to you and how you want to shape your life in the future. It is not your opportunity to lay blame for past difficulties. You should go to mediation to solve problems rather than to vindicate yourself.

The mediator does not make decisions for you and your family. The mediator gives the two of you the opportunity to settle your case in a way you both find acceptable.

### What are the goals of mediation?

Mediation...

- provides you with an improved method of communication and dispute resolution;
- allows you to settle your case on terms that are acceptable to you;
- may reduce the emotional trauma that you and your family are experiencing;
- helps improve compliance with settlements and decrees;
- can save you time and money; and
- in most instances allow you to move forward with your life.

### How is mediation initiated?

- Your participation in mediation can be court-ordered, obliged by a previous order or decree, or voluntary. You can participate voluntarily whenever you encounter a difficult situation you need help in resolving. While mediation normally occurs after legal papers are filed, filing is not a pre-requisite. You can participate any time you and the other party agree to mediate.
- If papers are filed, and a hearing or trial is docketed, the court will, in all likelihood, order you to mediate. Usually, this will occur when a temporary hearing has been requested, if your case remains unresolved after the 90-day pre-trial conference, or if contempt-of-court/rule to show cause has been filed. If your case falls into one of these categories, you will receive an order from the court.

### How do I prepare myself for mediation?

While you should come prepared to make your points, successful mediation depends on your willingness to negotiate in good faith and work toward a solution. Before beginning, have an understanding of what you wish to accomplish in mediation and think about solutions that are mutually-satisfactory. Be realistic about this. Judge Chad Kepros from Iowa's Sixth Judicial District advises: "consider whether what you want is within 'the range of reason.'" What is the range of reason? In family law, "it's the range of options available on an issue based on the facts of the situation as applied to the law that exists. If both of sides see the range of reason, and operate within it – even if they dislike it – there is usually going to be some overlap

where you can reach an agreement and eliminate the risks and costs of trial." A demand by you that is outside the range of reason may cause the mediation to end prematurely.

The one thing everyone should be able to agree upon is that it never makes sense to go to court for the privilege of losing. You should ask your lawyer about your rights and obligations, and whether your goals are within the range of reason. Your lawyer can help you determine the likelihood of achieving your goals in trial, and the cost of achieving them both financially and emotionally.

Next, you should determine what issues are being contested (see checklist on reverse) and prepare yourself to discuss these in a frank and realistic manner. If there is information and/or documentation you feel the mediator needs, be prepared to present it. (Note: your attorney may have the information or will need to get it for you.) Also, if you and the other party have previously exchanged settlement proposals, you may want to present them at mediation. These can narrow the contested issues and preserve valuable mediation time.

Third, you should be prepared to exchange the following financial information:

- Paystubs or other documentation showing income from all sources, including deductions for federal and state taxes, health insurance premiums, union dues and mandatory pension withholdings from the past six (6) months.
- Federal and State Income tax returns, including all schedules and W-2's for the last three (3) years, if not in the possession of the other person.
- A current financial statement.
- Statements and/or other documentation to support assets & liabilities listed in the financial statement.
- The Child Support Guidelines worksheet, if applicable.

Additionally, if children are involved, you will need to attend the Children in the Middle course. Information on the Children in the Middle program, Financial Statement and Child Support Guidelines can be found at the Clerk of Court's office or at [www.iowacourts.gov](http://www.iowacourts.gov).

Fourth, be flexible. In order to settle the case, you need to develop a proposal that's acceptable to the other side. Listen to him or her if you want him or her to listen to you. Treat each other not as adversaries, but as partners in problem solving, knowing that at some point, your interests may diverge.

Finally, be patient. Mediation is a process that takes time. Resist the temptation to get it over with as quickly as possible. Keep working as long as the mediator sees hope.

### How do I choose a mediator?

A list of mediators maintained by the program is available to anyone who inquires. Information on the mediators' training, experience and fee is also available.

More than likely, your lawyer will choose your mediator for you. The choice will be based on your lawyer's confidence in the mediator's ability to help bring about a resolution to your particular case. Your lawyer or you may also consider *cost* in determining a mediator.

**What are the costs?**

The costs for mediation include a \$80 administrative fee and the mediator’s fee ranging from \$70 to \$250 per hour. These fees are split between the parties. You should plan on a three-hour session and be prepared to pay your share of the costs. Assuming a split fee, your cost range is \$165 – 400.

If you are from low or no income circumstances, you may be eligible for reduced-rate or pro bono mediation. Those represented by a Legal Aid Society or a Volunteer Lawyers Project lawyer; those enrolled in the public assistance programs FIP, WIC, SNAP (food stamps) or SSD/I; and those unable to work due to mental or physical disabilities, are eligible. Eligible persons pay a fee of \$10 per hour. Food stamp recipients may also be required to pay the administrative fee.

If you do not meet the above requirements, you can still minimize your costs by choosing a mediator with a low hourly rate. Competent mediators are available in all price ranges.

**What is my attorney’s role?**

Your attorney plays a vital role when you mediate. In most circumstances, your lawyer will participate in the mediation with you. If your lawyer does not participate, it is strongly recommended that you consult with him or her about the legal aspects of your case before the mediation session, and as you desire, throughout the process. Your lawyer will help you understand the facts surrounding your case, the law that applies to your case, the range of reason under your circumstances, and the best way to package a solution to solve the short-term and long-term problems.

You and your lawyer can sign an agreement at the mediation session. If your lawyer isn’t with you, you can take a copy of the proposed agreement to him or her for review, advice, and submission to the court.

While having a lawyer is strongly recommended, you can participate just as fully if you don’t have one.

**What is the judge’s role?**

The judge is involved in every case. S/he will...

- issue the order(s) for mediation;
- determine whether to approve agreements you have reached; and
- hear your case and make the decision on unresolved matters.

Judge Kepros explains, “the judge is a problem solver; however, you can do it better. You’re an expert on your life. You can identify what is most important – not just on the big stuff but the details that makes your life work. Your attorney and the mediator can help you get informed so you can make good choices. The judge will do a good job in fashioning orders that help solve problems within the limits of the law, but s/he is never going to have the same level of expertise as you, the person living your situation.”

**What does a mediation session look like?**

Most commonly, the parties will be in separate “caucus” rooms and the mediator will shuttle between them. Some mediators will bring the parties together in a joint session, then split the parties into private caucus. Others will keep the parties in joint session the entire time.

Early in the mediation, the mediator will delve into the facts of the case, and help you and the other party assess your strengths and weaknesses. In subsequent caucuses, the mediator will assist in identifying the range of reason and help you exchange offers. As the mediation progresses, the mediator’s goal is to narrow the dispute to where your points of agreement outweigh your points of disagreement and it makes sense for both sides to come to a settlement. If one is reached, you will be expected to keep it. If an agreement isn’t reached, your dispute will progress toward a hearing or trial.

**Who else can attend the mediation?**

You, the other party, and each of your lawyers are allowed in the mediation room. Any other person’s participation is at the discretion of the opposing party. If, for instance, the other party says s/he doesn’t want your significant other in the room (or vice-versa), the mediator, in all likelihood, will honor that request. The significant other may be allowed to be with you in the private caucus, however.

The primary purpose of mediation is for the two of you to talk and listen to each other and work towards an agreement. Still, you may have a reason to bring a third party to the mediation. If you do, you should discuss this with your lawyer, the program coordinator, or the mediator prior to the session.

There may be instances in which the mediator solicits a third party’s participation. This may be requested before the initial session, or at a subsequent session.

**Are there situations where mediation would not be appropriate?**

Yes. If there is a history of domestic abuse, or if bringing the parties together could result in direct physical or significant emotional harm to one of the parties, mediation may not be appropriate. If this situation applies to you, you or your lawyer should request a waiver of mediation. If a no-contact order is in effect, mediation is only to occur when the parties are kept in separate rooms.

**Checklist of potential issues:**

A. Parenting Agreement

1. Time sharing schedule
  - a. School year
  - b. School breaks
  - c. Holidays
  - d. Parent and child birthdays
  - e. Vacations with children
  - f. Vacations without children
  - g. Time with extended family members
  - h. Schedule changes

2. Telephone access between children and parents

3. Transportation

4. Legal custody

5. Decision making: Who is to be included in decision making on the following issues?

- a. Categories
  - 1). Education
  - 2). Health
  - 3). Child care
  - 4). Extra-curricular activities

- 5). Religion
- 6). Motor vehicles and driver’s license
- 7). Other

b. Procedure: how will joint decisions be made and how

will any disagreements be handled?

6. Communication/information sharing
7. Religious training
8. Moving beyond the current geographical area
9. Periodic review

B. Financial support

1. Child support
2. Spousal support
3. Post-secondary education costs
4. Responsibility for children’s expenses
  - a. Uninsured medical/dental/vision costs
  - b. Activities
  - c. Clothing
  - d. Other
5. Life insurance on the children
6. Periodic review

C. Health insurance

D. Life insurance

E. Family home

F. Other real estate

G. Household goods and other personal property

H. Vehicles

I. Business Ownership interests

J. Stocks and bonds

K. Bank accounts

L. Other assets

M. Outstanding debts

N. Retirement

1. Pension and profit-sharing plans

2. IRA accounts

3. Other

O. Tax issues

1. Dependent deductions

2. Child care deductions

3. Filing for current year

- a. Separate or joint

- b. Disposition of refund

- c. Responsibility for balance owed

4. Capital gain taxes

P. Attorney’s fees

Q. Future mediation clause: at what point in future disagreements will we use mediation?

R. Temporary Arrangements

1. Housing

2. Parenting schedule

3. Financial support

4. Managing assets and debts

5. Other

S. Other