

mediation

n. the attempt to settle a legal dispute through active participation of a third party (mediator) who works to find points of agreement and make those in conflict agree on a fair result. Mediation has become very common in trying to resolve domestic relations disputes (divorce, child custody and visitation) and is often ordered by the judge in such cases. There are professional mediators or lawyers who do some mediation for substantial fees, but the financial cost is less than fighting the matter out in court and may achieve early settlement and an end to anxiety. However, mediation does not always result in a settlement.

Using the mediation experience and knowledge of a qualified mediator such as Teresa Colombo-Heavey helps avoid costly litigation and can help lead to a final resolution to which all parties agree.

Mediation is based on the concepts of negotiation, facilitation and problem solving and emphasizes fairness, procedural flexibility, confidentiality and full disclosure, along with the needs and interests of the parties involved. In many cases, it is the best, most economical and satisfying means to an end.

In family law, mediation can also provide long-term benefits by helping all parties learn to communicate better. This is particularly important in cases where children are involved. If all parties make a concerted effort to work things out, conflict can be minimized even if the process becomes adversarial.

Divorce and other family conflicts need to be dealt with carefully while taking into account the children's best interests and long-term relationships within the family. Teresa knows how to take these interests into account and work towards solutions that spare everyone the emotional and financial costs involved in a trial.

FORMAL RULES OF FAMILY MEDIATION

The purpose of these rules is to assist the parties in reaching a settlement of the issues submitted for mediation. The rules and guidelines are necessary to protect the integrity and confidentiality of the mediation process. The guidelines are designed to assist each party in examining relevant factors necessary for a full discussion of the issues.

AGREEMENT TO BEGIN MEDIATION

These rules will be a part of your mediation agreement pursuant to a signed Agreement To Mediate. All parties will be asked to sign such an Agreement prior to the commencement of mediation.

CONDUCT OF THE MEDIATION SESSIONS

The mediation process may be conducted in the manner that the mediator believes will most expeditiously permit full discussion and resolution of the issues. The mediator will assist the parties in fully discussing and understanding each issue before agreements are made so that both parties arrive at solutions that to them are fair and equitable.

CONCERNS OF THE MEDIATOR

The mediator may indicate verbally or in writing concerns regarding any final decisions that the parties made when the mediator is concerned about or does not understand the parties' sense of fairness. The mediator's comments may appear in the preliminary and/or final Memorandum of Agreement.

CONFIDENTIALITY AND PRIVILEGE OF MEDIATION SESSIONS

Under the Nebraska Mediation Act all communications, documents, and work notes made or used in mediation may be privileged and confidential. The parties agree with each other and with the mediator to keep the mediation discussions and documents privileged and confidential. By signing the Agreement To Mediate incorporating these rules and guidelines, the parties agree as follows:

That all mediation communication meaning any statement, whether oral or recorded which occurs as part of the mediation or is made for the purpose of considering, participating, initiating, continuing, or reconvening a mediation as well as retaining the mediator shall be confidential and privileged.

Through the adoption of these rules, the parties agree that they will not attempt to call the mediator as a witness in any litigation of any kind regarding the mediation sessions and, in like manner, the parties shall be stopped from requiring the production of any records or documents or any other notes of papers made by the mediator for any purpose associated with the litigation of any issue dealt with in mediation.

The foregoing exclusions from evidence and exemptions of the mediator and parties from giving testimony or being called upon to produce documents shall apply also to the use of neutral experts and other professionals called upon by the parties in mediation.

CHILD ABUSE EXCEPTION TO CONFIDENTIALITY AND PRIVILEGE

An exception to confidentiality and privilege shall be that the mediator is required under the Nebraska Parenting Act to report allegations of child abuse and child neglect that are criminal violations under the Nebraska Child Protection Act § 28-710 that are disclosed during the mediation process and have not been previously reported.

FINANCIAL ISSUES FULL DISCLOSURE

The parties agree that they will fully disclose to the other and to the mediator all information and writings as requested by the mediator, including financial statements, income tax returns, and all information requested by the other party if the mediator finds that such other disclosure is appropriate to the mediation process and may aid the parties in reaching a settlement. At the conclusion of the mediation process, the parties may find that the attorney will request further verification and disclosure in order to aid their review and implementation of their decisions in mediation and the parties agree that they will provide such information at the request of the other party. Likewise, at the conclusion of mediation, the parties agree that they will sign a verified (notarized) statement declaring that they have fully and truthfully disclosed all information concerning assets, liabilities, and income if so requested by the mediator or the other party.

PARTICIPATION OF CHILDREN AND OTHERS

Children of sufficient age or other person having a direct interest in the mediation may participate in mediation sessions related to their issues with consent of the parties and the mediator.

PROHIBITION AGAINST TRANSFERS OF PROPERTY, CHANGE OR CANCELLATION OF INSURANCE, OR ANY OTHER ACTION THAT CHANGES THE MARITAL ESTATE

Upon beginning mediation, the parties agree that they will not engage in any transactions that materially affect the status quo of the existing marital estate. They agree that transfers or sale of property without written agreement of both parties is prohibited, except in the usual course of meeting ordinary monthly obligations. Likewise, they agree that cancellation or change of health insurance, life insurance or other benefits should not occur while the parties are meeting in mediation.

DRAFTING OF MEMORANDUM OF AGREEMENT

At the conclusion of the mediation sessions, the mediator will draft a detailed memorandum setting forth the decisions agreed upon by the parties. The Memorandum of Agreement will be submitted by the mediator to each party and to the party's attorney. Any new or omitted issues raised by the attorneys will be returned to mediation if the parties are unable to efficiently and cooperatively resolve such new or omitted issues.

LEGAL REPRESENTATION

The mediator does not legally represent either of the parties. Each party may retain legal counsel of their own choice at any time during the mediation process.

ALTHOUGH IT IS RECOMMENDED THAT EACH PARTY EDUCATE HIM OR HER SELF ABOUT THE LEGAL APPROACH TO DIVORCE, THE MEDIATOR WILL ENCOURAGE BOTH PARTIES TO DISCUSS AND NEGOTIATE A SETTLEMENT BASED UPON THEIR OWN STANDARDS OF FAIRNESS AND THEIR OWN DECISIONS ABOUT WHAT IS BEST FOR THEMSELVES AND THEIR FAMILY.

SCHEDULING OF SESSIONS AND STARTING TIMES

Each party may be requested to prepay all or a portion of the mediation fee prior to commencement of a session. If any party needs to change their scheduled appointment, they are requested to do so at least 24 hours in advance. In-session mediation time will be billed commencing with the time that the session is scheduled to begin, unless the delay in starting time is attributable to the mediator.

HOURLY FEES AND ADMINISTRATIVE CHARGES

In addition to hourly charges for the mediation sessions, parties will be charge for the mediator's work outside of the mediation sessions, whether for the preparation of the mediated settlement agreement or for discussions with parties, their counsel, or with other persons concerning matters related to the mediation. Parties will also be charged for any phone calls associated with their case and for necessary word processing work.

DISAGREEMENTS

Should any disagreements rise between either party and the mediator concerning fees or charges, the parties agree that they will use the services of a mediator to resolve the disagreement after first trying to resolve it themselves.

INDIVIDUAL SESSIONS

Under Nebraska Statutes, all mediations begin with individual sessions. Even if the parties mediate in joint sessions during the mediation session, the mediator may confer with parties separately. These "caucuses" are designed to improve the mediator's understanding of the participant's position. Any information gained through private sessions is confidential, unless the participant authorizes the mediator to disclose such information to the other participant.

PHONE CALLS

As a general policy, the mediator may speak separately with either party on the phone, where the mediator believes it is necessary to do so. The parties may communicate with the mediator outside of the working session about any issues of substance associated with dispute. Procedural questions are permitted. **Likewise, parties are encouraged and permitted to discuss with the mediator, either in session or in private, any concerns related to their physical or emotional safety and well-being as it related to the mediation process.**

If a party feels that private communications with the mediator are imperative, they may call the mediator and present their concerns and reasons for discussing the matter outside of the scheduled mediation sessions.

INFORMAL RULES OF FAMILY MEDIATION

1. Speak only for yourself and in first person. Make "I" statements, not "you" statements.
2. Use language that does not blame or find fault with others.
3. Do not interrupt while another is speaking.
4. Do not use inflammatory words.
5. When identifying an issue, raise it as your own concern and follow it with constructive options as to how it might be resolved.
6. Make statements about your interests and needs rather than stating your position.
7. Be respectful of others.
8. Listen carefully and pay attention to what each person is saying without being judgmental about the person or the message.