

What is Family Mediation?

February, 2007



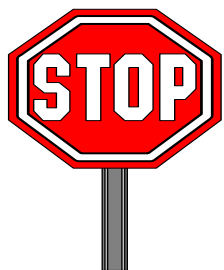
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Disclaimer — Please read

This packet of information was prepared to answer general questions and give general advice about mediation in Illinois. This packet may or may not also include forms that you can use. When reading this packet or using the forms, keep in mind that the advice, information, and forms were created to assist readers with general issues, not specific situations, and as such does not replace the advice or representation of an attorney licensed to practice in the State of Illinois. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to whether the use of this packet will achieve the result you desire and disclaim any responsibility for the consequences of any form prepared or action taken in reliance upon the information in this packet. If you are concerned or do not understand whether this packet will be of assistance to you or will apply to your specific situation, you should talk to an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer call the Self Help Center.

Look for these symbols to tell you when to:



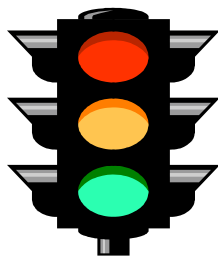
STOP!

You need legal representation or advice to con-



USE CAUTION!

This is a complicated step so pay attention.



GO!

You can proceed to the next step.



CHECK IT OUT!

This issue is discussed in another packet.

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Warning to all readers



Before you proceed with using this packet, you should ask yourself the following questions:

1. Have I tried to consult a private attorney to determine if this matter is appropriate for mediation?

Some matters may require that you seek the advice of an attorney. No self-help publication, packet, or form can replace the advice and experience of a licensed attorney.

2. If I cannot afford an attorney, have I tried to find a free source of legal assistance?

There are several agencies which provide legal assistance for free to certain groups of individuals. Some of these agencies are listed to the right. While they may not be able to help you with a particular problem, it does not hurt to call them before you proceed on your own.

3. Have I tried talking with the other disputant?

Before you proceed to mediation, you may want to attempt to talk directly to the other disputant to see if the matter can be resolved.

Free Sources of Legal Help

Land Of Lincoln Legal Assistance

Serves the 65 southernmost counties in Illinois

Toll Free: 877-342-7891

For additional information, you may visit their website at

[Http://www.lollaf.org](http://www.lollaf.org)

Prairie State Legal Services

Serves most of northern and north central Illinois outside of Cook County

815-965-2134

800-331-0617

Coordinated Advice and Referral Program for Legal Services

serving Cook County

312-738-9494

Will County Legal Assistance

Serving Will County

815-727-5123

How to use this self help packet



It is very important that you read each section of this packet completely before you take any action in regard to a legal problem.

Because this packet discusses terms and actions with which you are likely not to be familiar, you will need to refer back to the following sections from time to time:

People you should know

This section describes people with whom you may come into contact in regard to a particular legal problem. It is important that you understand who these people are and what they do and don't do.

What mediation means

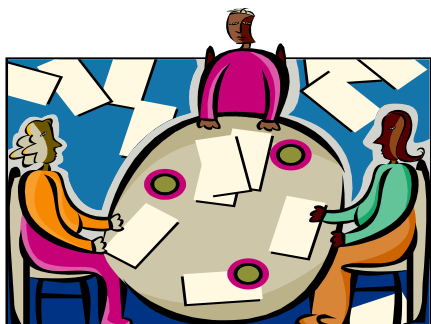
This section defines commonly used mediation terms in words that you can understand. To use the rest of the packet and any supplemental forms, you need to understand exactly what these terms mean.

Myths and Tips

These two sections discuss commonly held misbeliefs about mediation and steps that you should take (or not take) that could make your task easier.



Who these people are



Family Mediator:

A family mediator is someone who meets with you and the other parent. The mediator helps you both try to agree on a parenting plan for your child/children. A family mediator is not a judge and does not make decisions.



Attorney:

An attorney can provide you with advice about the law, the legal system, and your case. An attorney can act on your behalf and can represent you in court, in mediation, and in negotiation settlements. See page 4 for information on finding an attorney.



Judge:

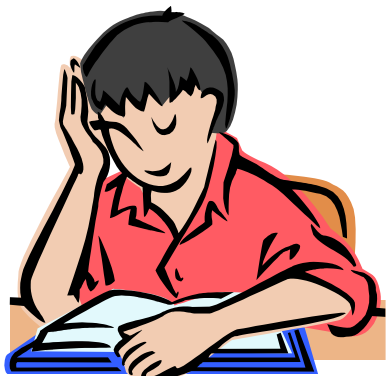
The judge is the person who is in charge of the courtroom. In most cases, the judge makes all of the final decisions and approves all agreements. The judge may send you to family mediation, or may suggest it. The judge must review any agreement made about children during family mediations.



Children

A child is someone born to you or adopted by you and under the age of 18. Parents are responsible for the care of the child until age 18.

What these words mean



Mediation

In mediation, the family mediator helps the parties reach an agreement acceptable to all parties. In mediation, everyone has a chance to talk and to listen, and to think of ways to resolve the matter.

Dispute

A conflict or disagreement between two or more people. The people involved in a dispute are often called disputants.

Family Mediator

The family mediator has been trained about divorce and about children. The family mediator is trained to help parents explore the options in order to decide on a parenting agreement. The family mediator will not take sides or make decisions for you.

Parenting Agreement

It is a plan for the future care of the children. It describes when the children will be with each parent. It describes who will make decisions about the children.

Confidentiality

An assurance that things said in family mediation will be kept private. See page 14 for more information.

Court

A place where judges make decisions. When the parents can't come to an agreement privately, a judge may resolve the issue in a public courthouse.



Books on family mediation



Disclaimer: Please Read!

The following is a list of publications which discuss the issues of family mediation. Some of these publications are specific to Illinois and others are more general in nature. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to the accuracy of the content of these publications including whether they will achieve the result you desire. The School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet disclaim any responsibility for the consequences of any action taken in reliance upon the information in these publications. If you are concerned or do not understand whether a particular book will be of assistance to you or will apply to your specific situation, you should talk to the publication's publisher or an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

Using Divorce Mediation: Save Your Money & Your Sanity
by Attorney-Mediator, Katherine E. Stoner

Choosing a Divorce Mediator: A Guide to Help Divorcing Couples Find a Competent Mediator by Diane Newman

Divorce Mediation Handbook by Paula James

Mom's House, Dad's House—Making Two Homes for Your Child: A Complete Guide for Parents Who are Separated, Divorced, or Remarried
by Isolina Ricci

Child Custody: Building Agreements That Work by Mimi E. Lyster

How to Find the Right Divorce Lawyer by Robin Page West, J.D.

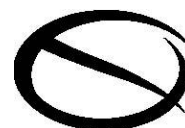
What is family mediation?



- Family mediation helps you, the parents, work out how to care for your children after the divorce or separation.
- Family mediation helps you reach an agreement you can accept. Together you decide the terms of the agreement. You might be able to do this better than a judge.
- The goal is to find a solution that is in the best interests of your children.
- You can also learn to communicate with each other concerning your children.
- You, the parents, can keep some control over the decisions about your child's life.
- Mediation helps relieve the stress at a time that is difficult.
- In some counties, mediation is required in certain types of cases, including custody.
- To know which counties, ask your attorney, the circuit clerk, or go to www.AboutRSI.org



Family Mediation is NOT . . .



- Family mediation is not therapy, marriage counseling, or an attempt to make you reconcile.
- It does not decide who is to blame for the breakdown of the relationship.
- The mediator is not a judge.
- The mediator will not decide how property should be divided.
- The mediator will not decide which parent should be the child's primary caretaker.
- Family mediation is not part of a police or enforcement agency.

Questions about family mediation



Where will the mediation take place?

Mediation is less formal than going to court. It will probably take place at the mediator's office or some meeting room, and not a courtroom.



Who will be there?

You, the parents, possibly your attorneys, and the mediator. Unless the mediator has agreed in advance, no one else comes to mediation.



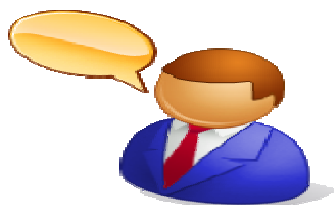
Will the mediator answer my legal questions?

The mediator will not give legal advice. You should have a lawyer for legal advice. The decisions you are making about your children are **very** important. You need legal advice. See page 4 for information on how to find an attorney.



Who gets to speak at a mediation?

Both parties will have a chance to talk. Both of you will take turns. The mediator will ask each of you to suggest possible ways to care for the children.



Questions about family mediation cont.



What will happen in mediation?

- The mediator will meet with both parties at one time and will explain the mediation process. This is your chance to ask questions if you have any.
- The mediator is likely to ask each of you to sign an agreement to mediate. This agreement explains what mediation is and helps to ensure privacy during mediation.
- The mediator will begin a discussion with both parents about the children and how you will take care of the children after the divorce or separation.
- You will make proposals for the care of the children. Be ready to make reasonable suggestions.
- You will listen to proposals from the other parent. Listen for what will work to care for your children.
- You will work with the mediator, discussing proposals until you arrive at plans that will be in the best interest of the children.
- The mediator may meet with each of you separately.
- When it looks like there is overall agreement, the mediator will go over the details and ask if you agree with them. Listen carefully. Be honest.
- If it looks like no agreement is possible, the mediator will end the session.



Questions about family mediation cont.



What if I'm uncomfortable at the mediation?



- Tell the mediator
- Ask for a break



Do I need to bring witnesses and exhibits?

- Mediation is not a hearing so witnesses are not needed.
- If you think there are exhibits that will help you and the other party, bring them.
- Remember, mediation is not a hearing to prove fault in the divorce. It is a chance to work together to plan for your children.
- What will help is calendar information such as work or school schedules.
- Ask the mediator in advance if there is anything you should bring.



Questions about family mediation cont.



Will the mediator make a decision?

- The mediator is not a judge and cannot make a decision for either party. The mediator helps you and the other parent work toward your own solution.



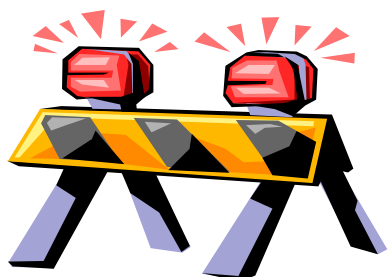
Who decides what solution is best?

- You, the parents, do. With the help of the mediator, the parties (not the mediator) try to arrive at a solution that is agreeable to everyone. The mediator will help the parties think about the possible advantages and disadvantages of a proposed solution.



Will the agreement be put into writing?

- Usually, the mediator will put any agreement reached into writing for both parents. Do **NOT** sign any agreement unless you intend to live up to it. In some counties, you may be asked to sign the agreement at the mediation session. You will need an attorney to prepare the agreement to present it to the court. Agreements about children need to be reviewed by the attorneys and the court.



Confidentiality and enforcing an agreement

Is Mediation Confidential?

- With certain exceptions, the mediator promises not to talk about the issues discussed in mediation.
- The mediator must report a plan to commit a crime or child abuse
- Ask the mediator about other exceptions to confidentiality.
- The mediator will ask the parents to agree not to call the mediator as a witness if they go to court.
- Most mediators destroy any notes taken during mediation.



How do I enforce my agreement after the mediation?

- Before signing the agreement, your attorney should review it.
- The attorney will prepare the agreement before submitting it to a judge
- After an agreement is approved by the judge, it is a court order.
- The court will then enforce the agreement if you ask the court to do so.



If you do not have an attorney:

- It is extremely important for each party to have an attorney review any agreement reached.
- These decisions will remain in effect for the life of the child.
- You need legal counsel during this time.
- If you need help finding an attorney, see pages 4 and 8 or go to www.illinoislawyerfinder.com.

How to prepare for mediation



1) Find a mediator whom both parties agree on.

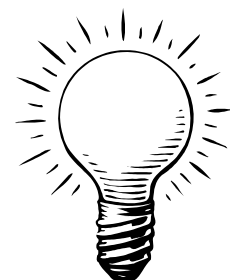
- It is important that everyone trust the mediator.
- To find a mediator, see page 17 of this packet.

2) Set time to mediate.

- You should work with the mediator to agree on a location, time, and place to mediate. Be sure to show up on time. Get directions so you know where to go. If for any reason you cannot keep the appointment, call the mediator in plenty of time.

3) Prepare yourself to listen with an open mind.

- It is important to be flexible. You get better results when you can reach an agreement together.
- Think about what will be best for your children. Try to listen and be creative to find a plan that will work for your children



4) Gather the proper documents.

- If the mediation occurs after the divorce is over, you will need to bring a copy of your Joint Parenting Agreement or Order regarding custody and visitation.

5) Work through the work sheet in this packet.

- See “Preparing for Family Mediation” on pages 21 and 22.
- This worksheet will help you think about your children and what they need.



Disputes which are appropriate for family mediation

Family mediation works best in situations when:

- The parents have to work together to raise the child/children.
- The parents want to resolve their dispute privately.
- The parents want something that a judge or court cannot, or is not likely, to give them.

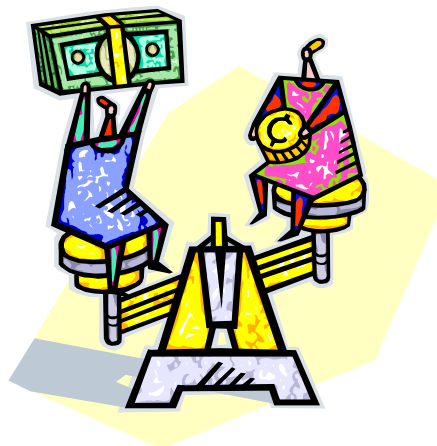


Typical examples of problems that can be addressed by family mediation are:

- A couple going through a divorce or separation.
- A situation in which the law provides no solution, such as in same-sex relationships.
- Family problems between parents and children, or between siblings over living arrangements or family routines.

Family mediation generally does NOT work when:

- The parties have a great imbalance of power.
- There is a history of domestic violence or abuse.



How to Find a Mediator



1) Check with the Circuit Clerk in your county.

- In some counties, the courthouse can provide you with a list of court-approved or sponsored mediators.

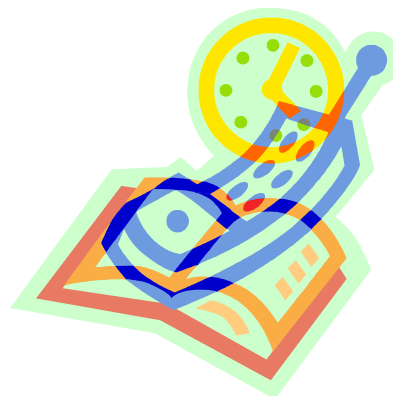
2) Search online for family mediators in your area:

- Go to a public library for internet access
- www.mediate.com
- www.mediatenow.org

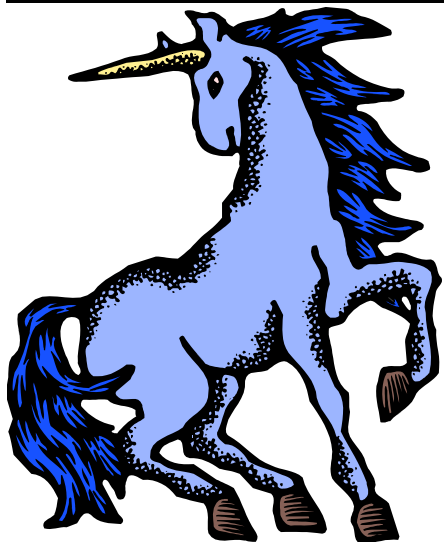


- ### 3) Get a referral from:
- Mediation Council of Illinois**
60B Terra Cotta Avenue
Crystal Lake, IL 60014
Tel: (312) 641-3000
www.mediationcouncilofillinois.org

4) Check the Yellow Pages; look under “Mediation Services”



Myths about family mediation



Myth: The Mediator gives legal advice.

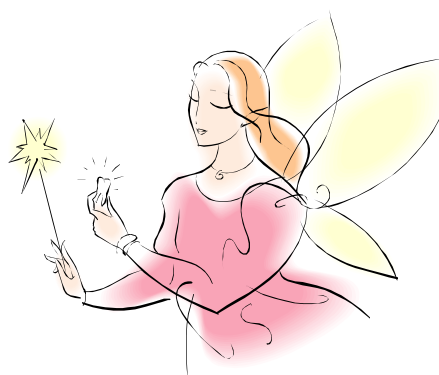
Fact: The mediator does not give legal advice to the parents. The mediator may suggest possible best or worst case scenarios. This is done only to help the parents think about what might happen.

Myth: Mediation is similar to going through counseling services.

Fact: Mediation is not counseling or therapy. The mediator focuses the parents on future goals to help avoid future disputes.

Myth: Family mediation requires compromise.

Fact: The goal of mediation is an agreement everyone can accept. It does not always require a compromise. It does require that each person listen to each other and be flexible.



Myths about family mediation, cont.



Myth: The family mediator makes the decision for the parties.

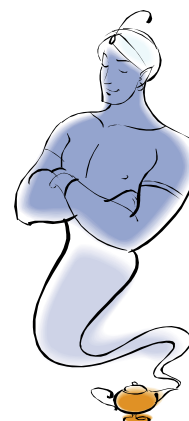
Fact: A family mediator does not make decisions.

Myth: If we mediate, we must come to an agreement.

Fact: You do not have to come to an agreement. You should not feel pressured to agree to anything. If you do not agree here, your attorneys can try to work out something or the court will decide. Or, you can make a partial agreement.

Myth: Courts are more qualified to reach a fair decision.

Fact: You and the other parent know your needs and wants better than the court. You are therefore in a better position to reach an acceptable agreement. You know and love your child/children!



Tips

1. Be polite:

Listen until it is your time to speak. Speak to those involved in mediation with respect. Remember the other parent of your child/children is the only one who can agree to a solution.



2. Explain what you think is best for your child/children:

Explain the reasons behind your requests. Parties are better able to agree if they understand the reasons certain things are asked for.

3. Remember the needs of the child/children:

The child/children's needs come first. Remember that it is you and the other parent who are separating/divorcing from each other, not the child/children. The children need each of you in their future. Loving parents will put their child's needs first.

4. Think about your needs and goals:

Consider what meets your emotional, economic or other needs. What can you give the other party in order to get what you want? Which of your goals are realistic.

5. If you have been ordered by a court to attend mediation, GO!!!

If you do not attend the mediation, the court may be upset with you. You may be in contempt of court because you have disobeyed a court order. Remember, you don't have to come to an agreement. There is no pressure to do so. But you have to come to mediation. Mediation is a good opportunity to help **you** reach an agreement, rather than have the judge reach one for you.



Preparing for Family Mediation

The following materials are provided to help you prepare for your upcoming family mediation. Please take some time to consider the potential issues that will be discussed and decided during the mediation session(s). These questions are designed to help you think about your child's needs, interests, and concerns regarding the separation.

This information is specifically for you to be better prepared to begin the mediation process. You will not be required to share your specific answers during the mediation session if you are not comfortable doing so.

ISSUES TO CONSIDER PRIOR TO FAMILY MEDIATION

- *Living arrangements with each parent
- *Holidays/special family occasion/vacation periods
- *Children's health

- *Transportation
- *Children's activities
- *Schooling
- *Discipline
- *Religious training

(1) What are your wishes for your child after the separation? _____

(2) How has your child dealt with the separation? _____

(3) How can you make this situation easier for your child? _____

(4) What is special/unique about your child? _____

(5) Who cares for the child besides his or her parents? _____

(6) Does the child have any children regarded as brothers or sisters, or is the child living with other children? _____

Preparing for Family Mediation (cont.)

(7) What daily activities, outside the home, are important to your child? _____

(8) Describe your relationship with your child. _____

(9) Describe your child's relationship with the other parent. _____

(10) How is your current relationship with the other parent? _____

(11) What are the other parent's strengths as a parent? _____

(12) What are your strengths as a parent? _____

(13) Do you have any concerns about your child spending time with the other parent? If so, what are they? _____

(14) What are your needs as you parent this child after the divorce/separation? _____

(15) What problems, if any, do you anticipate regarding the child custody agreement? _____
