

TEXAS FAMILY LAW

# MEDIATION

WHAT YOU SHOULD KNOW



THE LAW OFFICE OF

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# MEDIATION

## What You Should Know

You may have come across the term “Mediation” while researching divorce or perhaps you are in the middle of a divorce and a mediation has been ordered. It is common to be nervous or intimidated if you’re unsure about what to expect from mediation. The purpose of this quick guide is to help you understand what mediation is, how it is used in a family law case, and how you can best prepare.

**Disclaimer:**

This is not to be taken as legal advice and does not create a client-attorney relationship.



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# ***BENEFITS OF MEDIATION***

Mediation is meant to help two parties in conflict resolve their issues and amicably reach an agreement. This is not held by one party's attorney, but rather a non-bias 3rd party who helps each side communicate effectively and reach an agreement that works best for all involved.

The great thing about mediation is if you were to have a judge decide the outcome of your case, the judge can only give what the law permits. In mediation, you and the other party are free to work out resolutions on your own terms and come to your own agreement.

Another great benefit from mediation is it allows you the opportunity to learn more about the other side's case, strengths and weaknesses when moving forward with the case.

Mediation also helps to narrow the issues. You might find that you agree on some of the items which will shorten trial time and reduce legal expense.

Resolving your issues in mediation can save you a lot more money than having a drawn-out legal battle in the courtroom, which can rack up court costs, additional attorney's fees, and other miscellaneous costs.



# *WHAT TO EXPECT IN MEDIATION*

When going to mediation, the mediator typically holds the meeting in one of two scenarios. Sometimes the mediator will have each party in a separate room, where they are unable to speak to each other and the mediator goes back and forth to negotiate between the two parties. This means neither party will actually see each other at the mediation.

However, if the parties agree, there are times the mediator will hold the session in one room where all the parties are together, typically sitting across the table from one another. If the parties have attorneys, they will most likely be present, as well, to help counsel their clients.



# **WHEN PREPARING FOR MEDIATION**

When preparing for your mediation, it is a smart idea to collect your “bargaining chips”. This is something you can hold in your arsenal during negotiations. For example: A party is trying to get more than their entitled share of the community property and is also asking for additional assets. Perhaps, you don’t want them to touch your retirement, so you offer them more than their fair share of another asset. Your “bargaining chips” is basically a list of what you are willing to compromised on and/or let go of in order to protect something else of yours that you are wanting to keep. Be sure to make a list of everything you are willing to compromise on, in case a situation such as this arises in your mediation.

Think about what it is you want. Before you head into mediation, make sure you have a clear picture of what it is you are wanting out of the situation. Are you wanting more time with your kids? Are you wanting more child support? Are you wanting to keep the marital home? Having a clear picture of what you want allows for you to be focused of the actual purpose of mediation. When you combine your list of wants with your list of bargaining chips, it helps you and the other party both navigate together toward a resolution.

# COMMON QUESTIONS

**Do I HAVE to attend mediation?** Most Texas courts require the parties to at least try and resolve their differences outside of the courtroom, so they order both sides to attend mediation. You are not ordered to resolve the matter, but to at least attend the mediation and try. Mediation is not just for Final Agreed Orders but is very often used for Temporary Orders, as well, if one or both of the parties are seeking temporary orders during the interim until their case is finalized. If the judge orders mediation, it is not optional, and you must go. If you do not attend a court ordered mediation, not only could there be sanctions, but you could also weaken your case.

**Do I need to have an attorney with me during mediation?** It is always best to have an attorney on your side during mediation. They know the law, they know your rights, and they can guide you and are able to answer all your questions. If the other party has an attorney with them at mediation, it is even more critical for you to have a lawyer to counsel you and to help negotiate on your behalf. It is not required to have an attorney to attend mediation, but it is strongly advised to not go alone.

**When should I arrive for my mediation?** You should arrive to your mediation at least 20 minutes prior to the scheduled time to make sure you're at the right place, give you time to meet with your attorney, and get comfortable with the setting. At the very least, it is important that you arrive to your meeting on-time.

**How long will mediation take?** Generally, mediation is scheduled in 4-hour block increments. If you have parties who absolutely cannot reach an agreement during that time, it could possibly move to an 8-hour block or be rescheduled for a later date/time. If the parties cannot reach an agreement at mediation, then the matter will need to be handled inside the courtroom. So, it is best to go into mediation focused on the goal at hand- reaching an agreement with the other party.

**What should I wear to mediation?** There is no official dress code, but I always tell clients to dress appropriate and dress their best. Your attorney will be dressed in his/her best because they are professional and need to be taken seriously. The same concept can also apply to the client. When negotiating in mediation, this is now "business". You are in the business of trying to protect what is rightfully yours, so it is always best that you are dressed in a manner where you will be taken seriously. Again, there is no dress code when it comes to mediation, this is a suggestion we tell clients when they ask this question.

**What happens after mediation?** The absolute goal of a mediation is to have all the parties reach a solution they can all live with. The attorneys and the mediator all go into mediation with the clear objective to "Help these clients reach a great outcome". When you reach an agreement with the other party, the mediator will draft what is called a Mediated Settlement Agreement (MSA). This mediated settlement agreement will be filed with the courts and signed by the judge who is assigned to your case. The MSA is binding which means it cannot be broken and it can be enforced, should one party not hold up to their end of the agreement. The temporary orders or the final orders are drafted based on this agreement, as well, and filed with the court.

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We believe in educating and empowering our clients by making sure they are well-informed so they can make better decisions when it comes to their legal case. If you need help with your family law matter, have an upcoming mediation and need representation, or have questions in general, please contact our office for a free 30-minute consultation.



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