



Family Law Mediator Checklist

INTRODUCTION

Mediation of family law matters has become very common and provides many advantages over litigating such issues. Among those advantages is the parties' ability to determine what works best for them rather than having a judge make that determination. This provides a far more satisfying outcome for the parties involved, as well as their children, if any. Also, in almost all cases, the cost of proceeding through mediation is far less than litigating the same issues. In determining what family law mediator best suits your needs, it is useful to first understand the nature of mediation in a family law context.

Family law mediators may be retired judges, but in most cases they are not. The process does not involve the mediator "making rulings" as a judge would. The mediator does not have the authority to make any party do anything, but rather, will attempt to understand the interests of each party. He or she will work with parties to find solutions to their differences. When an agreement is reached, it will be reduced to a writing, which, when signed by all parties involved will be legally binding and enforceable. Each party will have the opportunity to consult with an attorney at any stage of the process, and before the agreement is signed.

While mediation is less expensive than litigation in court, there are costs involved. If the parties want an attorney present in the actual mediation sessions (which is not usually the case), the parties will be paying their attorneys' fees. The mediator will also charge a fee for his or her services.

All communications in a mediation are confidential. If the parties meet with the mediator separately, the mediator does not (and cannot by law) reveal information given in confidence to the other party. If the parties meet jointly with the mediator, nothing said during that session (and no document produced at the mediation in preparation for the mediation), can later be used in court, arbitration, or deposition, if a settlement cannot be reached through the mediation.

The mediation process should be considered in virtually every family law matter, since it provides a less expensive means of resolving issues, and can de-escalate conflict and lead to improved communications between the parties. At times this results in a reconciliation, ending the divorce proceedings. Nevertheless, improvements in the parties' relationship and their communication can assist them on a going forward basis, which is especially important when children are involved, regardless of age.

The following are among the questions to ask in determining who to retain as a family law mediator:

- 01 Have you personally been involved in a divorce? If so, was it handled through negotiation, mediation, collaborative divorce or litigation? Reflecting back on it now, what, if anything, would you have done differently?
- 02 Is there a way of proceeding that would both allow me to protect my interests and minimize the amount of hurt to everyone, including my spouse?
- 03 Can you assist me in determining which issues are worth pursuing, and which are not?
- 04 How can we effectively proceed in the easiest and quickest possible way?
- 05 Talk to the mediator about the legal area involved, whether it be divorce, paternity, or something else. Based upon that understanding, explain what you want and expect.
- 06 Explain the mediation process, as you do it. Do you have an overall philosophy in approaching mediation process? What should I expect from the process?
- 07 What time frame am I realistically looking at from start to finish?
- 08 What is your hourly rate and how do you bill for your services? How much might I expect to spend on this matter? What, if anything, can be done to decrease the cost without harming myself?
- 09 Other than acting as mediator, what is your background with regard to family law?
- 10 How much experience do you have mediating family law matters?
- 11 What is your perspective with regard to the involvement of attorneys in the mediation process?
- 12 What other types of professionals do you work with in the mediation process, if any, and why?
- 13 If we reach an agreement in the mediation, do you prepare a written document setting out that agreement? If not, who does? Should I have a lawyer review it before I sign it? Will the agreement be binding and enforceable in court?
- 14 If I agree to things in the mediation process, and later change my mind, will I be bound by those agreements?
- 15 What can I do if the other party lies during the mediation?

- 16 Are mediation papers part of the public record?
- 17 Are you going to report to the court about any aspect of the mediation?
- 18 Are you going to make rulings?
- 19 Are you going to pressure either of us to reach an agreement? If so, how?
- 20 What formal mediation training, if any, have you received?
- 21 Please tell me your understanding of the issues most important to me, so that I know that you heard me properly.