

UNDERSTANDING MEDIATION

Parental separation will bring emotional, physical and financial changes for families. When parents live separately, they need to discuss many issues including plans for parenting their children, division of property and future financial arrangements. Making these plans can be very stressful, especially during a time when each person involved may be experiencing strong emotions such as anger, hurt and fear.

The goals of mediation are to help parents communicate and focus their communication on developing a plan for meeting their children's needs. Better communication leads to better agreements. Mediation provides a way for parents to work on these agreements together with a neutral third party. This person is called a mediator.

Mediators may be lawyers or mental health professionals who are specially trained to help parents communicate clearly, focus on the issues which need to be agreed upon for the future rather than focusing on issues from the past. Mediators help develop parenting plans that are reasonable and acceptable to everyone involved. Mediators do not make decisions for the family. Mediators do not offer legal advice or provide therapy. Instead, they help parents make decisions that are truly in the best interests of the children and that both parents agree to. You cannot be forced to agree to anything discussed in mediation.

We know that parents who reach agreements through mediation are more likely to live by the rules of the agreement and spend less time and money on attorneys and court actions. Unfortunately, when parents leave decisions regarding their children to attorneys and judges, they may feel like bystanders who are ordered to comply with agreements they never chose or

agreed to. This often leads to anger and frustration as well as additional time and money spent in court.

What happens in mediation?

The mediator works with parents to clearly define which areas of parenting plans are agreed upon by the parents and which areas will need to be resolved. The mediator helps parents define the needs of the children and ways in which each parent can meet those needs.

Do we both have to participate?

Yes. Because mediation is a joint, cooperative problem-solving process, it is necessary for both parents to participate. Parents need not feel friendly toward one another but should be willing to work together to find solutions that will meet the needs of everyone involved.

Both parents are also required to separately attend a four hour educational program to help them better understand their children's needs and feelings during divorce and separation. For information or to register for the McHenry County Parents, Children and Divorce Program you may contact (815) 479-7591 or www.mchenry.edu/coneducation/DivoPro.asp.

Do our children participate in mediation?

Generally, no. However, in some cases teenage children may participate depending on the topic, the agreement of the mediator and the parents, the children's maturity levels and their willingness to participate. Although children's feelings may be explored in mediation, it is still the responsibility of both parents to develop the parenting plan.

Do I need an attorney?

Mediation is not a substitute for independent legal advice. Lawyers help their clients understand the law, make informed choices, review mediated agreements and complete the legal process. The mediator focuses on helping parents communicate and reach their own agreements but does not represent either party.

Are mediation agreements legally binding?

A mediation agreement may be drafted by the mediator and the parents as an informal working agreement. When an agreement is approved by a judge and is incorporated into a court order or divorce decree it becomes legally binding. Any changes to an existing court order or divorce decree must be approved by a judge to be legally binding.

What if we cannot work it out?

Mediation may not resolve all issues, but even partial agreements can help limit the time and expense of going to court. Sometimes it is helpful to suspend mediation and participate in counseling or to consult your attorney. Parents are then often able to return to mediation and resolve the remaining issues. Issues that cannot be resolved in mediation can be returned to the court for resolution.

What if I want to terminate mediation?

If you are thinking about terminating it is important to discuss termination with your attorney so that you can fully understand how this decision may affect the outcome of your case. If after consultation you still wish to end

mediation, you may do so at a time when both parents and the mediator are present.

Are there times when mediation is not a good idea?

Mediation works best when both parents are able to fully express their needs and interests and are capable of following through on agreements they reach. Mediation may not be the best choice if there are concerns about domestic violence, child abuse, mental illness or abuse of drugs or alcohol. If you have concerns about your personal safety when mediation is suggested, or at any time during the mediation process, you should immediately notify the mediator and your attorney. It might be possible to complete mediation with parents participating from separate rooms and the mediator carrying communication back and forth. In this situation, the mediator must take extra precautions to ensure each parent's emotional and physical safety. Consult with your mediator to determine the best available method of mediation for your family.

How much does mediation cost?

Mediation is often less costly, both emotionally and financially, than litigation. In McHenry County mediation fees are agreed upon between the mediator and the parents or as set by the judge. The parents are required to make a deposit equal to five hours of mediation before the mediation process can begin. The fee is typically shared by both parents with the percent each parent pays determined by the judge.

How do I find a mediator?

A list of qualified McHenry County mediators may be obtained by calling the Court Administration Office at the McHenry County Courthouse

(phone: 815-334-4000) or on the website of the McHenry County Circuit Clerk Department at www.co.mchenry.il.us/Common/CountyDpt/circuit/CirDivorce.asp. You may find other professional mediators in your community listed in the telephone directory yellow pages or you can also consult your local bar association or private attorney for a referral.



**Circuit Court
22nd Judicial Circuit
McHenry County, IL**

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2200 North Seminary Avenue
Woodstock, IL 60098**

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This brochure was printed through the generous contribution of the Family Law Section of the McHenry County Bar Association

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FAMILY
MEDIATION**



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