

FAMILY MEDIATION CONSUMER GUIDE

written by

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What is family mediation we hear about these days?

The process of mediation is an ancient practice of using a neutral outside person to facilitate communication between two conflicting parties to resolve their conflict. Often, the goal is to achieve a written agreement about the conflict. Any time two or more people have a relationship of any kind, the possibility of conflict—and the possible need for a mediator—exists.

If the relationship is a one-time encounter, resolving the conflict in a way that improves the ongoing relationship is not important—only settling the immediate dispute. However when the conflict is over parenting issues, communicating directly with each other about this and future conflicts becomes very important to the welfare of the children.

Family mediation can include facilitation of any family-related conflict. Family therapy with a Licensed Marriage and Family Therapist is useful in resolving many family conflicts, especially those between adolescent children and parents and between spouses/ex-spouses/step-parents. Family conflicts can also become quite intense when involving family-owned businesses or estate settlement following a family death. Divorce conflicts have the added stress of being controlled by the law and the court.

What will family mediation actually be like?

Regardless of prior professional training, the mediator may use different styles of facilitation. Some mediators use a relationship-focused style and others use an agreement-focused style. Sometimes the mediation process may include a combination of both, either with one mediator using different styles or with two separate mediators coordinating the different styles to address different issues. Figure 1 outlines the differences in these two styles. One can recognize the differences in these two styles by viewing the videotape “Family Mediation: Stylistic Range” which is available in some libraries or can be purchased from *J&L Human Systems Development*, 972-771-9985; fax 972-772-3669. This video demonstrates how one family might experience each of the styles using two separate mediators.

Who attends the mediation sessions is one major difference. The **agreement-focused style** includes the two disputing parties and their attorneys. There are reasons for having the attorneys present: the mediation is generally completed in one long session, thus having no time to consult with attorneys for legal advice outside the session; the goal is to end the mediation session with a legally binding agreement, therefore needing attorneys to review the agreement on the spot. The goal is to reach an agreement quickly so as to finalize the legal settlement without further delay. Mediators using this style generally separate the parties into separate rooms and go back and forth between the rooms with messages from the other party. This style of communication is intended to reduce the explosiveness of the conflict so that legal decisions can be made. This style of facilitation is similar to the way attorneys are trained to interact and is often used by attorneys trained in mediation.

On the other hand, the **relationship-focused style** generally does not include attorneys in the session because the sessions are shorter [2-3 hours each vs. a half day or whole day] and consultation with attorneys is possible between sessions. The goal of this style of mediation is to reach an agreement through face-to-face communication between the parents so they can form the agreement themselves in language they fully understand. Their attorneys then draft the language in “legaleze.” Working with conflictual parties in the same room is comfortable for family therapists trained in mediation, and therefore

most often used to encourage parents to communicate effectively by initially using a mediator to monitor and guide the process.

How do I decide which style of mediation is best for us?

Asking yourselves the following questions might be helpful in deciding:

- Can we communicate directly with each other when someone else is present to moderate the conflict?
- Has our case been in the court process more than 90 days with no end in sight?
- Are we as parents the decision-makers or are the kids taking over playing one against the other?
- Are we able to understand the needs of the kids and focus on the kids without a facilitator present to keep us on track?
- Are our attorneys likely to be collaborative or antagonistic while we participate in mediation?
- Does the state law expect us to share Joint Managing Conservatorship whether we choose to or not?
- Would any safety risk to our child/ren be addressed more accurately if together or separate?
- Is there a history of domestic violence in the marriage which would intimidate one party if talking together?
- Are our property issues relatively straightforward or more complex, such as owning our own business?

How do I find a mediator right for my situation?

If your conflict is about divorce issues, the disputed issues may need to match the mediator’s background and style. If the dispute is over parenting issues (conservatorship, access, parenting decision-making), a mediator trained in family therapy and family law may be most appropriate. If the dispute is over property distribution, a mediator trained in legal and tax implications of property distribution will be especially helpful.

Suggestions for locating a mediator:

- √ Get a referral from a satisfied customer
- √ Ask your minister, attorney, or therapist for a referral list
- √ See if the local court has a list of approved family mediators who meet state requirements
- √ Check credentials: meets state standards for family mediators; is a member of a professional mediation organization; if also a family therapist, attorney, or CPA, holds a valid current license which regulates ethics
- √ Ask the mediator before the appointment what style they use, what their fees are, and how long the process will take; reluctance to answer these questions is questionable

In looking at the service needs of divorcing families chart [Figure 2], you may decide that your family functioning resources are rather low. You might benefit from other services which focus on improving family functioning, such as divorcing family education or therapy. If your family functioning resources are strong, but your ability to get through the legal system is weak, legal education and legal counsel are essential. A wide variety of services are available to meet many needs.

Getting through a healthy divorcing process is not easy. Your library will likely have a number of helpful books/videos on parenting after divorce, family mediation, and the legal divorce process. Check it out!

STYLES OF FAMILY MEDIATION COMPARISON

model developed by Lynelle Yingling, PhD, & Larry Hance, JD



SERVICE NEEDS OF DIVORCING FAMILIES

model developed by Lynelle C. Yingling, PhD

