**QUESTIONS ABOUT THE MEDIATION PROCESS**

**WHAT IS MEDIATION?**

Mediation is a process where a mediator, an impartial third party, assists you in making mutually agreeable decisions about family law issues. An important part of the mediator’s role is to help you keep your communication respectful with each other and to help you stay focused on finding workable solutions that are in the best interests of your child(ren).

The mediator does not have authority to engage in fact finding or to make decisions about how issues will be resolved. Any agreement reached is based solely on the decision of the parents.

Mediation is an informal way to resolve disputes outside of the formal legal system.

**DOES THE MEDIATOR PROVIDE LEGAL ADVICE OR COUNSELING?**

No. Even if the mediator is an attorney or a licensed mental health professional, the mediator is not acting as an attorney or as a counselor. The mediator will not give legal advice or provide counseling to either parent. The mediator does not represent either parent. Both parents are advised to obtain independent legal advice.

**HOW MUCH DOES MEDIATION COST?**

If you are mediating as part of your divorce or have chosen a mediator who is not part of the MARCH Mediation Program mediation generally costs about $200 per party. If you are divorced or have never been married you may qualify for free mediation services through the MARCH Mediation Program. To find out more about MARCH Mediation go to: www.marchmediation.org or call 1-800-595-9750.

**WHAT ISSUES CAN BE DISCUSSED AT MEDIATION?**

Almost any issue relevant to your family law case.

**WHEN DOES MEDIATION END?**

It ends upon agreement by the parties and the mediator. The mediator may end the mediation at any time if the mediator believes that continuing would be unproductive or harmful to one or both of the parties or the child(ren).

If a parent has been ordered to mediate by a court, that parent is obligated to attend a mediation session for a minimum of two hours.

**WHAT IF WE REACH AN AGREEMENT?**

Any understanding reached by you as a result of mediation will not be binding upon you until it is reduced to writing, signed by both parties and reviewed by your attorneys and approved by the Court.

The mediator will generally prepare a memorandum of understanding which is a global description of any agreement reached between the parties. Said memorandum of understanding is then generally sent to your respective attorneys after the mediation session.

**IF WE DON’T REACH AN AGREEMENT, WHAT WILL THE COURT BE TOLD?**

If mediation is court ordered, the court will be told only that no agreement was reached or if a parent fails to attend a court ordered mediation. If the mediation was not court ordered, the court will not be told anything. Missouri law provides that the mediation process is confidential and nothing said in setting up or conducting the mediation may be repeated in court.

**CONFIDENTIALITY DURING MEDIATION OR SETTING UP MEDIATION**

Communications during mediation are confidential. The mediator may not share information with anyone outside of mediation without the permission of both parents, (with the exception noted regarding threat of harm or abuse or neglect of a child.)

Communications during the process of setting up the mediation are also confidential. Neither the mediator nor someone who acts on the mediator’s behalf to set up mediation can be subpoenaed or otherwise compelled to disclose any matter disclosed in the process of setting up or conducting a mediation session.

**WRITTEN MATERIALS**

Any written material prepared by or received by a mediator or someone acting on her or his behalf relating to a mediation is also confidential. The only written materials that may be shared with anyone are:

1. A summary of the parents’ understanding prepared by the mediator and provided to the parents, and with the parents’ permission, provided to their attorneys, if any, and to the court;
2. Other documents filed with the court in order to obtain a judgment of the court incorporating the parents’ Summary of Understanding; and
3. Case forms shared with evaluators for the purpose of determining the effectiveness of the Mediation session.

**EXCEPTIONS TO MEDIATOR CONFIDENTIALITY**

Exceptions to mediator confidentiality exist if the mediator reasonably believes that a threat of violence will result in death or serious bodily harm or if there has been unreported abuse or neglect of a child. In such situations the mediator is required to make a report to the appropriate authorities.

**AUTHORITY**

Missouri Supreme Court Rule 88.08 provides for the confidentiality of communications made during a mediation and in setting up a mediation. The same provisions are codified in Chapter 435.014, Missouri Revised Statutes.

**WHAT HAPPENS IN MEDIATION?**

Usually everyone meets together in a private room. Each party gets an opportunity to speak about what is important to that party and to hear what is important to the other side. The mediator (or sometimes co-mediators) do not decide what is right or wrong. The parties decide the outcome. The mediator facilitates the discussion.

**WHAT IF ONE PARTY REFUSES TO ATTEND MEDIATION?**

If mediation is court ordered and one party fails to attend mediation without good cause, the court may enter a contempt order against that party. The court may also strike the non complying party’s pleadings.

**WHAT ARE THE ADVANTAGES OF MEDIATION?**

There is no agreement unless both parties agree. You do not give up control of your dispute to a judge to decide. You decide. Decisions about your family are made by your family through mediation.

Mediation is usually less expensive than litigation.

Mediation is confidential.

Mediation is faster than waiting for a trial date.

Mediation preserves relationships by improving communication.

Mediation tends to produce lasting agreements because the parties have produced them.

**ARE THERE CASES NOT APPROPRIATE FOR MEDIATION?**

Family matters in which there is physical or psychological abuse are not suited to mediation. If there is an extreme imbalance in bargaining power, sophistication, or knowledge of the parties, mediation may not be appropriate.

**DO I NEED A LAWYER TO GO TO MEDIATION?**

You do not need a lawyer. If there are substantial legal issues involved, it is best to consult a lawyer about what your legal rights are prior to coming to mediation. Mediators may or may not be lawyers, but in mediation, the mediator cannot give legal advice to the parties. You are entitled to bring your attorney with you to mediation but generally lawyers do not attend mediation with their clients in family law cases.

**WHAT DO I NEED TO BRING WITH ME TO MEDIATION?**

You should be prepared to bring and show any documents that will help the other side to understand your point of view in the matter. You should also come prepared to explain your perspective fully.