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## **WHAT CAN I EXPECT WHEN I GO TO MEDIATION?**

Mediation is a confidential, voluntary, problem-solving process by a neutral third-party. Efforts are made to make the setting safe and neutral. Discussions are facilitated by an impartial third party, the mediator(s), who encourages and assists the parties in communicating their needs and desires and in brainstorming possible creative solutions. The goal is to reach a resolution that is designed and acceptable to both parties. There is no pressure to reach a settlement and the process is voluntary. The mediator has no power to make a decision or force a particular result on either party.

A professional mediator is a trained neutral who helps parties to understand the underlying reasons for the disagreement, communicate and identify their own needs, interests, concerns and underlying issues; identify the needs of others (including children and others who may not be part of the mediation process), and look at possible solutions. The mediator may recommend other resources that might assist the parties and may address any other issues, ideas and emotions that are affecting the parties. The mediator uses her experience to “brainstorm” or identify possible solutions, solve problems and reach a decision all can live with. The mediator may also sometimes reduce an agreement into a written form, often called a Memorandum of Understanding (MOU). The mediator may not force or enforce agreements.

Mediators do not have to be attorneys. Although I am an attorney, I am not working as a lawyer for either party when mediating. As a neutral third-party mediator, I am not representing either party and cannot provide legal advice to either party. The parties are always encouraged to review any proposed agreement with their own attorney. Attorneys are welcome and encouraged to attend the mediations. Lawyers often serve as important resources during the mediation by assisting clients to identify and assess options and to determine if proposed options are in the client’s best interests. Attorneys are not required to attend, however.

Discussions held in mediation are considered confidential if resolution does not occur. This means one party cannot use what the other party has said, offered or remarked during the mediation at a later court proceeding. Of course, if an agreement is reached and reduced to a signed writing, the document itself is generally not considered confidential. The mediator generally cannot be called to testify as to what took place during the mediation. There are exceptions to this rule if threats to the life or safety are made of a party, a child of a party or another person or if a party admits to commission of a crime.

While skilled mediators are often familiar with psychology, relationship dynamics, child development, relevant laws, financial issues and the legal process, they do not (and may not) offer legal, tax, bankruptcy or financial advice. Mediators may not act as an advocate for any of the parties to the mediation. Mediation is NOT therapy. However, mediators will offer suggestions and engage discussions which explore options. This often results in resolving parts of issues, which can often lead to a complete settlement of the dispute.

Cases involving family disputes are unique to many other cases. Mothers and fathers will have to continue to work together to raise their children. Each parent will need to ask the other parent to make accommodations to the parenting schedule from time to time when illness, work, weather, traffic or the occasional “flat tire” creates delays or otherwise makes keeping the usual parenting plan difficult. Even after children are grown, divorces spouses have to face one another at graduations, weddings, and other family functions. Although people get divorced, they continue to remain “families” for some purposes for many years to come. Mediation often assists families in reaching their common goal of maintaining a civil relationship for the betterment of their children.

Many parties are able to reach mediated agreements that fully resolve their legal cases, thus saving the expense, time, and overall emotional toll of court trials. (Statistics show that the greatest costs of litigation are incurred in trial preparation.) Parties know the intimate details of their personal lives and can better decide which possible alternatives will fit into their own lifestyle. Courts and judges, while hard-working and well-intentioned, often have to juggle busy criminal cases with family law matters. Some judges have had little experience with family law prior to becoming judges. Criminal cases generally take priority over domestic matters so divorces can experience delays. The court system often cannot give parties the time, or respond with the speed families need to fashion a result that fits a particular families’ needs. Mediation allows the parties to schedule the proceedings at a time that fits their own schedule and allows them the time they need to explore settlement.

Our experience is that attorneys enjoy the courtroom far more than clients do. Although it may be entertaining to watch someone “hammered” in cross examination on the witness stand in a television drama, most people don’t look forward to living that drama in real life. The resulting anger and upset does not seem to inspire people to feel like working together after the trial ends. The reality is that after court, the lawyers send out their bills, leaving clients to have to deal with the resentment and hurt feelings the litigation caused to the other spouse.

When understandings or agreements are reached through mediation, parties may wish to have them memorialized in a formal document. This document is most often called a “Memorandum of Understanding,” “MOU,” or “Mediated Agreement.” It is signed in a good faith commitment by all parties and, once fully executed, is often submitted to the court for its approval and order. Once the agreements in the document become an order of the court, they are fully enforceable under the law.

Mediation is used in a variety of situations including business relationships, family concerns, divorces, child custody matters, child and spousal (“alimony”) support cases, post-decree modification of financial and child-related matters and other family law matters. Mediation is

also used in contract disputes, neighborhood conflicts, dissolution of marriage, homeowners association issues, workplace matters, consumer issues, and municipal, county, and district court cases. In short, when conflict or misunderstandings arise, mediation may well be the quickest, most amicable, method in which to resolve the situation, especially with people whose interests or circumstances include an ongoing relationship.

**What to bring to mediation:**

- A list of all issues and concerns you wish to discuss.
- All supporting documentation pertaining to the issues.
- An open mind and a willingness to commit to the process.

If financial matters or support will be discussed, a signed Sworn Financial Statement (forms may be obtained from the Self-Help office at the local courthouse or State Court website at <http://www.courts.state.co.us/chs/court/forms/domestic/alldomesticforms>)

Please feel free to call us at 719-520-5441 if you have questions or consult our website for further information at [www.landislawoffice.com](http://www.landislawoffice.com).