
What is Mediation?

Answers to frequently asked questions

What is mediation?

Mediation is an informal way to resolve disagreements. A neutral person, the mediator, helps those involved:

- determine the important issues,
- explain and understand each other's proposals,
- clear up misunderstandings,
- explore creative solutions, and
- reach acceptable agreements.

The mediator does not tell people what to do or decide who's right or wrong. The participants make the decisions.

Why use mediation?

People choose mediation for many reasons - some of them are:

- Mediation can be less confrontational and less stressful than arguing at trial in front of a judge.
- Mediation offers privacy and confidentiality.
- Mediation provides a non-adversarial environment for making important decisions.
- Mediation can save time and money.

What can be mediated?

Just about anything can be mediated when people are open to exchanging proposals. Some issues that are well suited for mediation are:

- parenting plans for children, which includes parenting time, communication, and making decisions about the children;
- property and debt division in divorce cases;
- disputes in small claims cases;
- disputes between landlords and tenants;
- concerns in Child in Need of Aid cases; and
- concerns in adult guardianship and conservatorship cases.

The participants decide what issues to mediate.

Can we mediate before we file a court case?

Yes. In fact, many people avoid a contested case by going to mediation before filing a case with the courts.

For example, a married couple planning to divorce might use mediation to discuss the division of their property or a parenting plan for their children. If agreements can be reached on all issues, an uncontested case can be filed instead of a contested divorce.

In another example, parents needing to modify a custody or support order from years ago may engage in mediation before filing a Motion to Modify. This may help to reduce family stress and resolve the matter faster than a long court battle.

If we have a court case open, does the judge need to know we are also in mediation?

Yes. Your judge may take the mediation into consideration when scheduling hearings and determining next steps.

Is what we say in mediation confidential?

Civil Rule 100 and Probate Rule 4.5 state that mediation discussions are confidential when the court orders mediation. This allows open and honest communication without worrying that what you say will be used against you later.

If mediation is not ordered by the court, Evidence Rule 408 prohibits parties from disclosing mediation discussions in a hearing or trial. Additionally, most mediators have a written confidentiality agreement that is signed before starting mediation. Ask your mediator to explain the confidentiality agreement and any limits to confidentiality.

How long does mediation take?

It can take from one hour to many hours - one session or several sessions. It depends on:

- the number of issues to mediate,
- how much you disagree,
- the participants' willingness to brainstorm and accept different proposals, and
- how sensitive the topics are.

What if one or both of us have attorneys?

Mediation works well with or without attorneys. The participants will have to decide whether attorneys will attend.

If you are representing yourself, it may be helpful to talk with a lawyer. Legal advice before or after a mediation session can help you understand your legal rights and responsibilities. A lawyer can also help you develop proposals for resolving your case. Finally, a lawyer can review the agreements you are considering.

What happens if we reach an agreement in mediation?

The agreement is written down, all the participants sign it, and if it involves a court case, it is filed with the court.

If you have a lawyer, ask the lawyer how this will be handled. Usually, once the agreement is written and signed, the lawyer will file it in court.

If you do not have a lawyer, ask the mediator how this will be handled. You will need to decide who is responsible for filing the agreement if it involves a court case.

Once the agreement is filed, the court will usually schedule a hearing to finalize the agreement.

What happens if we don't reach agreement?

If you did not reach an agreement, the judge will decide all the issues in the case.

If you agreed on some issues, you can file a partial agreement with the court. The judge will decide the remaining issues.

Mediation can be helpful even if you do not reach an agreement, because it will help you identify the issues you will need to focus on at a hearing or trial.

What happens if there is domestic violence?

Mediation may not be appropriate when there has been domestic violence between you and another person in the case.

If you are considering mediation with a person who controls or attempts to control you through force, intimidation, or the threat of violence, you should request a private session to discuss this with the mediator.

If you are a victim of domestic violence, you cannot be required to participate in mediation if you do not want to. Mediation in cases involving domestic violence must be provided by a mediator trained in the dynamics of domestic violence to protect your safety and the safety of your household members. As a victim of domestic violence, you may bring a support person or advocate to the mediation, including a lawyer (see Alaska Statutes 25.20.080 & .110).

Does mediation cost anything?

Mediators charge different rates, but you can ask about prices before deciding who to hire. The court offers free mediation in a variety of cases, including divorce with children, child custody, minor guardianships, adult guardianships, and child in need of aid.

How do we get into mediation?

Sometimes parties agree to mediate and agree to hire a mediator on their own. You do not need to file a case before you mediate.

If you have a divorce with children, child custody, adult or minor guardianship, or child in need of aid case, you can ask the court to refer you to one of the court-sponsored mediation programs. Use the court mediation forms: <http://www.courts.alaska.gov/forms/index.htm#med>

How do we find and choose a mediator?

If you are participating in court-sponsored mediation, the court will assign you a mediator. If you are agreeing to private mediation, call around and talk to mediators until you find someone you want to work with.

Please note that in Alaska, anyone can act as a mediator. There are no state standards or licensing requirements. Mediator education, training, experience, and style vary. It is up to those involved to decide what they need in a mediator and to select the mediator with the necessary skills and approach. To help parties choose a qualified mediator, the Alaska Judicial Council publishes a free guide to selecting a qualified mediator:

A Consumer Guide to Selecting a Mediator (<http://www.ajc.state.ak.us/publications/docs/guides/MediatorGuide.pdf>)

For more information, go to:

<http://courts.alaska.gov/mediation/index.htm>

or visit the Court System's Family Law Self-Help Center's website at:

<http://courts.alaska.gov/shc/family/selfhelp.htm>

If you have additional questions, please call the Dispute Resolution Coordinator at (907) 264-8236 or email DisputeResolutionCoordinator@akcourts.gov.