

## IS MEDIATION RIGHT FOR YOU?\*

### What is Domestic Relations Mediation?

Mediation is a process which allows you and another party to resolve your dispute outside of the traditional court process. Unlike hearings or a trial, you and the other party work together with the mediator, a trained neutral professional, to identify solutions to your problems, such as custody, visitation, and property division.

The mediator does not say who is right or wrong, and unless requested, does not provide recommendations for resolving your dispute. Mediation can be quickly arranged, and frequently saves time and money compared to going through the traditional court process. Mediators are required to keep all information they receive confidential. In addition, anything a party tells the mediator in confidence will not be disclosed to other parties unless the party has specifically given the mediator permission. At the start of the mediation, parties are asked to sign an agreement not to call the mediator as a witness in any legal or administrative proceeding concerning the dispute.

If you go through mediation you are not required or forced to reach an agreement with the other party. All agreements are voluntary. Most people who try mediation do resolve their issues successfully. However, if you and the other party are unable to reach an agreement during mediation, you are still able to seek help through the traditional court process. No options are taken away from you because of your decision to try mediation. You can choose to try mediation or a judge may order you to try mediation.

---

\* We are indebted to the *Michigan Domestic Violence Screening Protocol*, the 4<sup>th</sup> Judicial District Office of Dispute Resolution, and the Colorado Judicial Branch Office of Dispute Resolution for the information they provided.

### What are the Benefits of Mediation?

Compared to the traditional adversarial court process, mediation may:

- be less time consuming
- reduce emotional and financial costs
- allow more privacy and confidentiality
- allow you to express all your opinions about the issues and results you want in an informal setting
- give you more control over the outcome of your dispute
- lead to fewer court proceedings after a judgment has been entered
- allow you to be more creative and tailor a unique solution

### When Should I Not Mediate?

Most often, mediation is set up where you will be in the room with the mediator and the other party. You will spend this time speaking to the mediator and the other party about what you want and need in the hope of coming to an agreement with the other party in your domestic relations case. Therefore, it is VERY important that you feel you are able to talk honestly and directly in front of the other party. You should not mediate if you do not believe you will be able to talk about what is important to you during the mediation, or if you believe you will agree to something you don't really want to agree to. You should not take part in mediation if you think there is anything that will limit you or the other party to participate effectively in the process.

Mediation is not appropriate and does not work when either party:

- ✓ uses fear, force, threats, violence or intimidation to get what they want;

- ✓ does not respect or listen to your opinions and interests; or
- ✓ makes you feel afraid to openly express needs and concerns.

**The Colorado statute (CRS 13-22-311) says “. . .the court shall not refer the case to mediation . . . where one of the parties claims that it has been the victim of physical or psychological abuse by the other party and states that it is thereby unwilling to enter into mediation” (emphasis added). Therefore, it is up to you to inform the court if you do not want to use the mediation process due to domestic violence.**

### What Should I do if I Have Concerns about my Case Going to Mediation?

If you have any concerns about your safety or other issues that may impact the mediation, you should raise them when you schedule the mediation. The Office of Dispute Resolution, along with your mediator, can work with you to structure your mediation to promote a safe and fair outcome.

If you think mediation isn't right for you, you may file a “MOTION RE: EXEMPTION FROM MEDIATION/ADR ORDER (DOMESTIC RELATIONS CASE),” form JDF 1307. This form is available online or you may pick it up in room 101. **Complete the form within 5 days of being referred to mediation and file the motion in room 105.** A Judge or Magistrate will review the motion and determine whether or not mediation is appropriate for your case.

## What is Domestic Violence?

Domestic Violence is defined as a pattern of coercive behavior used by one partner to control and/or dominate the other. It cuts across all socioeconomic, educational, racial/ethnic, and religious lines. It is one person scaring another into doing what the abuser wants. Abusers use physical and sexual violence, threats, money, emotional and psychological abuse to control their spouse or intimate partner in order to get their way. Many people don't think of themselves as victims of domestic violence; however, if you answer yes to any of the following questions, you may want to consider speaking to a TESSA advocate and informing your mediator.

- Do you have any concerns about how the two of you will make decisions during mediation?
- Are you afraid or worried that the other party will harm you during mediation or after you leave because of what you say in mediation?
- Has the other party ever denied you access to the children? Has the other party ever denied you or the children access to money for food, shelter, medical needs, clothing, etc.?
- Do you or the children ever feel afraid of the other party?
- Has the other party ever pushed, shoved, hit, kicked, choked, or restrained you or the children, or pulled your or the children's hair?
- Has the other party ever used or threatened to use a weapon to harm you or the children? Has the other party ever threatened to kill or injure you, the children, a co-worker, friend, or another family member?

**4<sup>TH</sup> Judicial District  
Office of Dispute Resolution**  
(Located in the El Paso County Judicial  
Building)  
270 South Tejon, Suite B23  
Colorado Springs, CO 80903

Phone: 719-448-7777

Fax: 719-448-7685

### **T·E·S·S·A**

TESSA offers victims of domestic violence confidential information and referrals, emergency shelter, crisis intervention, counseling, support groups, and safety planning. For more information about TESSA or to speak with a confidential advocate, please call **TESSA's main office 719-633-1462 or the 24-hour Crisis Line 719-633-3819.**

# **Domestic Relations Mediation and Family Violence**

## **What you need to know**