



Dear Mediation Attendee:

You have just been informed that you are going to have to attend mediation to attempt to settle your pending family law case. I suspect that you have several questions about what mediation is and why you have to go and what to expect. The purpose of this letter is to attempt to address many of the frequently asked questions regarding mediation so that you feel more confident in embarking upon this process.

**FAQ #1: What is mediation and why do I have to go?**

Mediation is a process during which you and the other party work with an impartial person to attempt to reach an agreement on some or all of the issues of your case. My job is to facilitate communication between the parties to promote settlement. I can suggest ways of resolving the dispute, but I cannot impose my own judgment for that of either party.

Mediation is frequently ordered by the Court, especially if your case is set for a significant amount of time for a hearing. Sometimes attorneys recommend mediation prior to setting a final hearing so as to speed up the process of wrapping up a case. But mediation is such a beneficial process that I'd encourage you to look at it not as "I have to go" but as "I get to go". Mediation allows you to have more control over the outcome of the case than you will have if you leave everything up to a judge or jury.

**FAQ #2: I'll never settle anything with the other party because the other party is such a <insert favorite complaint here>! Why are we wasting our time and money on this?**

While certainly no one can be required to commit to settle their case at mediation, all parties must commit to participating in good faith with the intention of settling if at all possible. This means you and the other party are both showing up to try to bring matters to a resolution. When everyone shows up with the knowledge that the worst that can happen is you don't settle, it frees you and the other side up to try to find common ground.

As a practicing family lawyer, I settle the vast majority of my cases in mediation – even cases that I would have sworn would never settle. So show up ready to do some work, find some compromises, and walk out with things resolved instead of still in limbo. With that kind of attitude, anything is possible! Should the case not settle – because, again, I don't have the authority to decide any of the issues for you or the other party – then your very able attorney will be glad to take the next steps in allowing a judge or jury to decide what happens in your case.

**FAQ #3: Can I bring my boyfriend, girlfriend, daddy, mama, next door neighbor, friend who got divorced last year, minister, or favorite dog walker with me?**

In a word – no! Have you ever heard the saying "too many cooks spoil the broth"? The same is true in family law cases. This is not the time to trust your friend's neighbor's ex-brother-in-law's favorite gym trainer's friend who had a case just like this except that it was totally different and in another state. This is the time to trust yourself and trust your attorney – you don't need all those voices in your head creating confusion.

You are, however, welcome to bring your current spouse with you, if you would like.

**FAQ #4: Who are you and why do you get to mediate my case?**

Whenever it's time for mediation, attorneys try to agree on a mediator. If they do, then that's who you use. If they cannot, then the Court appoints an attorney off of a wheel of qualified mediators – whomever is up next is appointed.

I am a family law attorney in Longview, and I have been a mediator since 2007. If the Court simply appointed me, then you get what you get and you don't throw a fit because I fit the qualifications of appointment. However, if your attorney agreed, then it is likely because I am passionate about cases reaching a resolution without causing any unnecessary or prolonged damage to the ongoing relationship that you will have with the other party, especially if you are raising children together. I believe firmly that parties working together can come up with a better resolution than a judge or jury because no judge or jury will know all the things that you want them to know. Although your attorney will do their very best to get out all the relevant information, no one will be as invested in this case as you – and so you are the best person to help bring it to resolution.

Just so you know, I cannot and will not serve as a mediator in a case where I have any financial or personal interest in the result of the mediation. Should I become aware of any circumstance likely to create a presumption of bias, I will let all the attorneys know immediately. In the event that there is not an agreement for me to serve once this information is known, then I will step aside to allow another mediator to serve.

**FAQ #5: So are you telling me that you have a magic wand and can make all this be done?**

Well, in a word, no. But what I can do is work with you and the other party – with the help of the amicus attorney if one has been appointed – to try to bring this matter to a resolution. I will advocate for settlement and do my best to help you think outside the box to reach settlement, but it is ultimately the choice of you and the other party to settle or not settle.

If an agreement is reached, I will help to memorialize it in writing, and you will have an opportunity to review it and ask questions of your attorney or make changes to the document.

Once the agreement is signed, it purports to be a binding contract and is enforceable in court to the extent allowed by law. This means no "take backs" – once it's signed, it's done. I will remind you of this in mediation, and it will be included as part of the signed agreement.

You are responsible for negotiating your own settlement. Your attorney will have lots of advice for you, and I will have ideas to add about settlement, but I cannot and will not impose a settlement. I will use every effort to facilitate the negotiations, but I cannot warrant or represent that a settlement will result from the mediation process.

**FAQ #6: What if we just can't settle? Can we leave?**

I actually have the sole discretion to determine when a mediation shall terminate. You and your attorney are expected to remain on the premises and participate until released by me.

Having said that, I won't hesitate to end a mediation if it is clear that we have reached a standstill and further attendance is not useful. But as long as we are all working together in good faith, I will keep the mediation going – even if it extends beyond the prearranged time frame. (Read my letter about the cost of that, though, so you're not surprised if things run long.)

The mediation will only be terminated if (1) you and the other party execute a settlement agreement, (2) I decide that it's no longer worthwhile to continue, or (3) the full mediation time has been used and either party does not wish to continue past the prearranged time.

**FAQ #7: You must hear a lot of personal information. Are you going to run and blab about this?**

Absolutely not! Mediation is a private and confidential process. This means that the only people allowed to be present are you, your current spouse (if you'd like), and your attorney. (Of course, your attorney can bring a legal assistant if they deem that helpful.) No one else can attend mediation without the permission of both the other party and me.

Any confidential information disclosed to me by you or your representative won't be shared or divulged, except as compelled by law. (This means that I, like your attorney, am obligated to report child abuse or elder abuse if I hear of it.) Anything else that I learn of, receive copies of, review, or otherwise am privy to is completely confidential. I cannot be compelled to release such information or to testify in any adversary proceeding or judicial forum. This rule is so strong that if either party tries to violate this, they are required to pay all fees and expenses of me and the other party, including reasonable attorney's fees, incurred in opposing the efforts to compel testimony or records from me.

By participating in mediation, you are agreeing that I am neither a necessary or proper party to any judicial proceeding related to the mediation.

Also, no court reporter or stenographer will be allowed to record the mediation process, and no one is allowed to record (audio or visual) any part of the process.

In fact, I will only hold onto my notes from the mediation long enough to answer any drafting questions the attorneys may have when completing final documents, and then they will be destroyed. (The notes, not the attorneys.)

Another super fab thing about mediation is that you can make settlement offers that won't be held against you in Court. So you may make a really great offer, but if the case doesn't settle, you don't have to make such a great offer in Court and the other side can't even hint about your willingness to settle it that way in mediation.

Just so I cover myself, you do need to know that any oral communication or written material that is used in mediation is admissible or discoverable if it is admissible or discoverable outside of mediation, and, if this confidentiality rule conflicts with any other legal requirement for disclosure, the issue may be presented to the appropriate court for an in camera review and determination. (Note: I am a lawyer, but I am not your lawyer, so ask your lawyer if you have any legal questions about this.)

**FAQ #8: Do I have to sit in the same room as the other party or even see them?**

Nope. In some civil litigation, the mediator starts out with a joint group session. I've never found that helpful, and since I want to get right to helping you, I'm not going to make you guys hang out around the same table and talk to each other or me. You and your attorney will be in one room, while the other party and their attorney will be in a separate room. I bounce back and forth between the rooms to try to facilitate an agreement. You could quite literally arrive, negotiate an agreement, sign the agreement, and leave without ever laying eyes on the other party.

Also, just so you know, I generally start with the Petitioner (that's the person who filed the suit) because they have the burden of proof in the case. However, I'm open to starting with whomever the parties mutually agree on if you'd like something different. Please know that just because I'm in the room with the other person, that does not mean that they are somehow "winning" or convincing me that they're right – I simply can't be in both rooms at once.

**FAQ #9: I'm hungry. Are we done yet? Can I make a Sonic run?**

No Sonic runs will be allowed during mediation – even if you promise to bring me back whatever I want; however, if the mediation is set for a full day, then I'll provide lunch for everyone (and it'll be so much better than Sonic) so that no one gets hangry.

Beyond that, throw a Snickers in your bag for a mid-mediation refuel because you know you're not you when you're hungry.

**FAQ #10: Okay, so this actually sounds pretty awesome. I don't have to see the other party, I get to have more control over the outcome than if a judge or jury hears it, and I might be able to save myself the expense of trial. Is there anything else I need to know?**

Just a few closing details. First of all, no one can serve a subpoena, summons, complaint, citation, writ, or other process on any person entering, attending, or leaving, the mediation. This also means that no one can be served near the mediation site either. So if you're thinking of a surprise ambush on someone at mediation, then you're wrong. Don't make me put on my mom voice and tell you that, either. Just don't do it. Be all Golden Rule zen, alrighty?

Secondly, don't forget that you don't have to settle! You have an awesome lawyer who has total ability to see you through trial, so if you want to go that way, then you can. No pressure to settle, just show up and give it your best shot.

And lastly, if you have any questions, just ask. I want you to understand how and why mediation works, see the value of it, and be a full participant, so speak up and jump into the process.

I look forward to working with you to help settle this case.

Most sincerely,



Christina Hollwarth  
Family Law Mediator