FAMILY COURT OF THE STATE OF DELAWARE

MEDIATION

What is Mediation?

Mediation is a required Family Court process where persons are given an opportunity to resolve their differences and make their own agreement which, when signed by a Judge or Commissioner, becomes an enforceable Order of the Court.

Is Mediation required in all cases?

No. Mediation is generally required in custody, visitation, child support and guardianship matters. The Court believes that all parties should attempt to mediate their differences and reach an agreement. Although a motion to bypass mediation may be filed, it would normally be granted only in exceptional situations.

When is Mediation not allowed?

Family Court mediation conferences shall be prohibited in any child custody or visitation proceeding and in any support proceeding in which 1 of the parties has been found by a court to have committed an act of domestic violence against the other party or if either party is ordered to stay away or have no contact with the other party, unless a victim of domestic violence who is represented by counsel requests such mediation.
Further, Family Court mediation conferences shall be prohibited in any child custody or visitation proceeding in which 1 of the parties is a tier 2 or 3 sex offender.

What will the Mediator do?

Prior to the mediation, whenever the residence of a child is at issue, the mediator will review the parties' criminal and Protection from Abuse histories. The mediator will also run a criminal history check of the residents of the parties' households. In custody,

visitation and guardianship mediations, the mediator will also review the Custody, Visitation and Guardianship Disclosure Report.

Mediators support both parties in reaching a decision and do not take sides, or make decisions. The mediator will ask each party what his or her position is regarding the issue before the Court and attempt to facilitate agreement. If the parties come to an agreement, the mediator prepares a consent order which all parties sign and which is subject to approval by the Judge or Commissioner. In reviewing the consent order the Judge or Commissioner will review the criminal histories of the parties and residents of each household in which the child will reside or visit. If no settlement is reached at mediation, the case will be scheduled for a formal court hearing.

How should I prepare for Mediation?

You should complete all forms mailed to you and bring evidence to support your position with you to mediation (such as proof of support payments or medical statements from doctors). You are permitted, but not required, to bring an attorney to your mediation session. If you are considering obtaining an attorney, do so prior to your scheduled mediation.

Who can attend Mediation?

The petitioner and respondent must attend and their attorneys may attend. Children do not attend the mediation conference. Witnesses are not allowed for mediation.

What happens if Mediation for Child Support and Custody/Visitation is not successful?

In child support cases, if no agreement is reached at mediation, the mediator may recommend an Interim Order (a temporary order) for the Commissioner to sign or the parties may be taken before a Commissioner that same day for a Permanent Order. Therefore, you should come to mediation prepared to go to a hearing if your mediation is unsuccessful. If you do not see a Hearing Officer that day, the case will be scheduled for a court hearing at a later date.

In custody/visitation cases, the mediator may recommend an Interim Order (a temporary order) for the Judge or Commissioner to sign if there is no prior Order for custody or visitation.

Can the Mediator predict the outcome of my case if it goes to a Judge or Commissioner?

No. Each case in Family Court is decided on the information presented at the hearing. However, in child support cases, the Judges and Commissioners usually follow the Delaware Child Support Formula which the mediator will calculate to determine an appropriate amount of support. Please remember that only a lawyer can give legal advice. A mediator cannot give legal advice at any time and does not represent either party.

How do I request a continuance of my Mediation?

A request for a continuance is required to be made in writing to the appropriate mediator in a timely manner prior to the mediation conference. **Form 548**, Request for Continuance of Mediation, should be used for this purpose. The request must be provided to the opposing party or, if represented, the opposing attorney. The request must contain the following information:

A. The original filing date of the petition.

B. The position of the opposing party regarding the continuance request.

C. The number of times the case has been scheduled.

D. The reason the request is being made.

E. A working phone number.

The mediator will consider all of the above in determining whether to grant the continuance.

I live more than 100 miles from the courthouse, can I appear by telephone?

A request to participate in the mediation by telephone is required to be made in writing to the appropriate mediator in a timely manner prior to the mediation conference. **Form 539,** Request for Telephonic Participation at Mediation, is available for this purpose. The request must be provided to the opposing party or, if represented, the opposing attorney. The mediator will consider whether to allow you to participate by telephone.

What happens if I do not appear for Mediation?

If you filed the petition, the mediator may recommend that the petition be dismissed. If you are the respondent and notice was sent to your last known address, the mediator may recommend that a capias be issued for your arrest or recommend a default order granting the relief requested by the petitioner.

What if the other party and I reach an agreement outside of Mediation?

Unless you are a client of the Division of Child Support Services, if you reach an agreement outside of mediation, you may write that agreement up on a consent order form (found online and in the Resource Centers) and file it with the Court. Until it is signed by a Hearing Officer, however, it is not a Court Order. If your mediation date is upcoming and you have not received a signed order from the Court through the mail, you must contact the Court to see if your appearance at mediation is still necessary.

Family Court Contact Information

New Castle County	Kent County	Sussex County
500 NORTH KING STREET WILMINGTON, DE 19801 (302) 255-0300	445 SOUTH GOVERNORS AVENUE DOVER, DE 19904 (302) 672-1000	100 EAST MARKET STREET GEORGETOWN, DE 19947 (302) 855-7400

For more information, visit the Family Court webpage or scan the QR code.