

## **MEDIATION**

After the Defendant files an Answer or the thirty days to do so have ended, the case is set for mediation. In many counties it is your obligation as the "Plaintiff" (the person filing the action) to schedule the mediation and to send the other side notice. If you do not hear from the court about scheduling your mediation, you should call the Clerk's office and ask how to set your case for mediation.

### **WHAT IS MEDIATION?**

North Carolina law requires that the parties to a custody law suit attend mediation before the case goes to a judge. "Mediation" is a meeting where the people involved in the custody lawsuit (the mother, father, grandparent or other legal guardian) sit in a together with a mediator. Each person takes turns telling the mediator and the other side what they each want for the child's custody and visitation plan. The goal of mediation is to agree on a plan for custody and visitation that both parties can agree to. The topics discussed are usually: where the children will live, a visitation schedule for weekends, mid-week visits, telephone calls, holidays, summer, and school breaks. (Child support is NOT discussed or decided in the mediation.)

### **WHO IS THE MEDIATOR?**

The mediator is a person who does not take any person's side in the mediation. The mediator is a "neutral", trained professional whose only job is to help the parties reach an agreement. The mediator will not decide who is right and wrong or force anyone to agree to anything. The mediator is appointed and paid by the Court.

### **HOW MUCH WILL IT COST?**

It is free. If you are asked to pay for this service, please contact the Legal Aid of North Carolina's HelpLine at 1-866-219-5262.

### **WHERE IS THE MEDIATION HELD?**

The mediation is held at the courthouse or other location typically in the county where the lawsuit has been filed.

### **WILL ATTORNEYS BE THERE?**

No.

### **WHAT HAPPENS IF WE REACH AN AGREEMENT?**

The mediator will put the custody and visitation agreement in writing and each party will sign it. This may be done by mail several days after the mediation has ended. This agreement is called a "Parenting Plan". After the parties sign the Parenting Plan, the family Court Judge signs it, making it become a court order.

### **WHAT IF ONE SIDE WANTS TO CHANGE THE PARENTING PLAN?**

If one side wants to change the Parenting Plan, that person needs to file a motion to modify the Plan. The Court will send the parties to mediation again.

### **WHAT IF ONE SIDE VIOLATES THE PARENTING PLAN?**

If one party violates the Plan, then the other party can file a motion in court to ask the family Court Judge to require the other party to come to court and explain why she or he violated the

Parenting Plan. The Court can punish the other side if the Plan is violated the Plan; or the Court can modify the Plan.

**WHAT IF WE DO NOT REACH AN AGREEMENT AT MEDIATION?**

Your case will be heard in court and decided by a judge.

**WHAT ARE THE BENEFITS OF REACHING AN AGREEMENT AT MEDIATION?**

Mediation is usually quicker than going to court to get a decision. You can avoid the possibility that the Judge will rule against you. It is less of an emotional trauma than going to Court. You can save yourself and your witnesses the time, inconvenience and embarrassment of testifying in court.

**ARE THERE ANY EXCEPTIONS TO MEDIATION?**

Except in approved situations, all custody cases go to mediation. Mediation may be "waived" (not required) in these situations:

- One of the parties lives more than 100 miles from the Court
- The parties have agreed to private mediation (subject to approval from the Court)
- The other party has abused or neglected the children involved in the case
- The other party suffers from alcoholism or abuses drugs or abuses the parent who is filing the case
- The other party suffers from severe psychological, psychiatric or emotional problems