



PUTTING CHILDREN FIRST

**A Booklet for Families in Transition
Child Custody and Visitation Mediation Program**



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The North Carolina Child Custody and Visitation Mediation Program (referred to in this booklet as the Custody Mediation Program) was established in 1989 by the North Carolina General Assembly with N.C. GEN. STAT. § 7A-494 and § 50-13.1. The program offers families the chance to resolve their custody and/or visitation lawsuits and avoid the stress and anxiety of extended and often bitter court battles.

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What is Custody Mediation?

Mediation is a guided conversation. Custody Mediation offers a “family-friendly” way of handling a custody disagreement. The mediator helps the parties look at their parenting concerns and the needs of the children. Custody mediators are trained to do the following:

- **Guide the conversation.** Mediation is a give and take of information. Each person can share their goals and ideas about caring for the children. The mediator directs and focuses the conversation. This helps many parties create their own court order and avoid a court hearing.
- **Focus on the future.** In mediation, people don't have to agree on the past. Instead, the mediator helps everyone talk about a plan that avoids repeating past problems. The family looks at the best ways to care for the children in the future. Other important issues such as child support or property division can be addressed outside of the Custody Mediation Program.
- **Recognize the parties as experts.** The mediator does not take sides. The mediator does not decide who is right. The mediator works to make sure the conversation is respectful and productive. Mediation helps people brainstorm solutions that cover the concerns they have.
- **Help parties write an agreement.** A parenting agreement includes a clear schedule of how the children will spend time with the parties. It also includes how parenting decisions — both large and small — will be made. If an agreement is reached, the mediator will write it and mail copies to everyone for review. Attorneys will be sent copies at the same time. When the parenting agreement is signed by both parties, the judge will review it.
- **Resolve custody without going to court.** Once the parenting agreement is signed by the judge, it becomes an enforceable court order. A custody trial is no longer needed. Families save the time, money, and stress of a trial while still having the protection of a court order.
- **Promote future success.** Most people who come to custody mediation do not expect that they will reach an agreement. But more than half of the people do. When people work hard to create their own parenting plan, they are more likely to follow it. Most parties are happier with mediation than they are with a court hearing.

How the Child Custody Mediation Program Operates

- Once a custody and/or visitation lawsuit is filed, the case is sent to the Custody Mediation Program. Parties in the custody case are court ordered to attend an orientation session and one mediation session.
- Orientation is usually scheduled within 30 days of the date the case is sent to the Custody Mediation Program. Orientations are group classes that prepare you for mediation.
- Mediation sessions may last up to two hours. Additional sessions may be scheduled if everyone agrees and the mediator has time. Only the parties named in the lawsuit are present for mediation.
- The discussions in mediation sessions are private. The mediator will not share information discussed in the session with others, including the judge or attorneys. This rule *does not* apply if the mediator has concerns about child abuse, hears threats to harm someone, or witnesses a crime.
- While the parties are required to attend a mediation session, they are not required to agree. If parties agree, the mediator writes the parenting agreement and sends it to the parties and their attorneys. If the parties do not agree in mediation, the case moves forward for a judicial hearing.
- Parties are strongly encouraged to meet with an attorney before signing a parenting agreement. Once approved by the judge, the parenting agreement will be entered as an enforceable order of the court. (Please read page 13 of this booklet for important legal information.)
- Each district has local rules that outline the operational procedures for its Custody Mediation Program. These can be viewed online at www.NCcourts.gov. Select the county where your case is filed in order to get the appropriate local rules.

Frequently Asked Questions

Is mediation right for every case?

If you have serious concerns for your safety or the safety of your children, mediation is not the best place for you.

Substance abuse, alcoholism, and violence raise serious concerns. If these problems have been addressed elsewhere, parties can agree to include those specifics in a parenting plan. If these problems have not been addressed, families can talk about options during mediation. Mediators do not investigate how safe or unsafe a situation is.

Only a judge can allow your case to bypass mediation and go directly to court. The Motion and Order to Waive Custody Mediation form (AOC -CV-632), is available online at www.NCcourts.gov. Forms also may be picked up from the Custody Mediation office. Once filed, a judge will review the motion to determine whether mediation is waived or not.

What is the cost for custody mediation?

Services are provided at no cost to the parties in a custody action. The General Assembly provides funding for the Custody Mediation Program because of the benefits it provides to parents and children of this state.

May I schedule an interpreter?

Yes. The court provides certified foreign language and American Sign Language interpreters for anyone needing these services. Call the Custody Mediation office as soon as possible to let them know you need an interpreter. Friends or relatives cannot serve as interpreters in the custody mediation session.

How do we figure out child support?

Child support can be handled through your county child support office or through a judge's order. Financial matters are not addressed in child custody mediation.

What if I live out of the area?

The Custody Mediation Program often can set up a mediation session to overlap with travel schedules or arrange videoconference mediation. Please speak with the custody mediator.

Only a judge can exempt you from custody mediation. If you are seeking an exemption from mediation due to distance from the courthouse, the Motion and Order to Waive Custody Mediation form (AOC -CV-632), is available online at www.NCcourts.gov. Forms may also be picked up from the Custody Mediation office. Once filed, the judge will review the motion and make a decision.

What if I want to change my current custody order?

You will need to file a Motion to Modify Custody. Contact the Custody Mediation office for more information.

How do I file a complaint?

If a party has a complaint against either the mediator or the mediation process itself, the complaint should be made in writing and delivered to the chief district court judge of your judicial district.

How to Prepare for Mediation

During mediation, you will discuss your children's needs and explore plans for how those needs may be met. The mediator will guide you during these discussions and help you to explore many options. Understanding the other person's point of view does not mean you agree with it. But this understanding helps people find solutions that cover both of their concerns reasonably well. A good parenting agreement covers these parenting concerns while supporting the general well-being and care of the children.

It is helpful for some parties to view mediation as a type of business meeting — the business of raising children whose parents live apart.

Remember, you are not required to reach an agreement during mediation. Also, the mediator will not make decisions for you. No one is expected to agree to anything that risks their safety or the safety of the children.

Take a few minutes to think about the following questions:

- What would I like to accomplish during mediation?
- What are the important topics that need to be discussed?
- If I were the other party, how would I view these topics?
- What's most important to the other party?
- What are three ways each problem or topic might be solved?
- If an agreement is not reached, what are my options?
- What can I do during mediation to help find solutions that work for everyone?

Be prepared to discuss:

- Schedules for the children, including school year, summer, vacations, and holidays
- Ways to make major decisions for the children (such as major medical and school issues)
- Communication and information sharing
- Exchanging care of the children
- Travel
- Additional parenting provisions important to you

During mediation:

- Phones should be set so that they are not a distraction.
- No recording devices are allowed in mediation.
- If your job requires you to carry a weapon, you should be off-duty and out of uniform when attending mediation. No weapons of any kind are allowed in mediation.

Parenting Questions

What information should I share with my children?

Children do best when they know that they are safe, loved, and free to love both parents. Let children know that the change in living situation is **not** their fault. As much as possible, protect children from the details of your adult problems.

You may have reasons to feel upset or hurt by the other parent, but it's different for your children. Protecting their relationship with the other parent helps your children become happy and healthy adults. It's important that children know when they will see their other parent again, so they do not feel abandoned by that parent.

Most children do best with a routine. You can let your children know that their parents are working together on a new plan.

How should I answer my children's questions?

Children will ask many questions. Consider their age and keep answers as simple as possible. Children do not want to be put in the center of the conflict. They do not want to hear either parent blamed. Stress to the children that while their parents are moving apart, both parents still love them as much as ever. Stress that plans are being made to make it easier for everyone, especially them.

What about counseling?

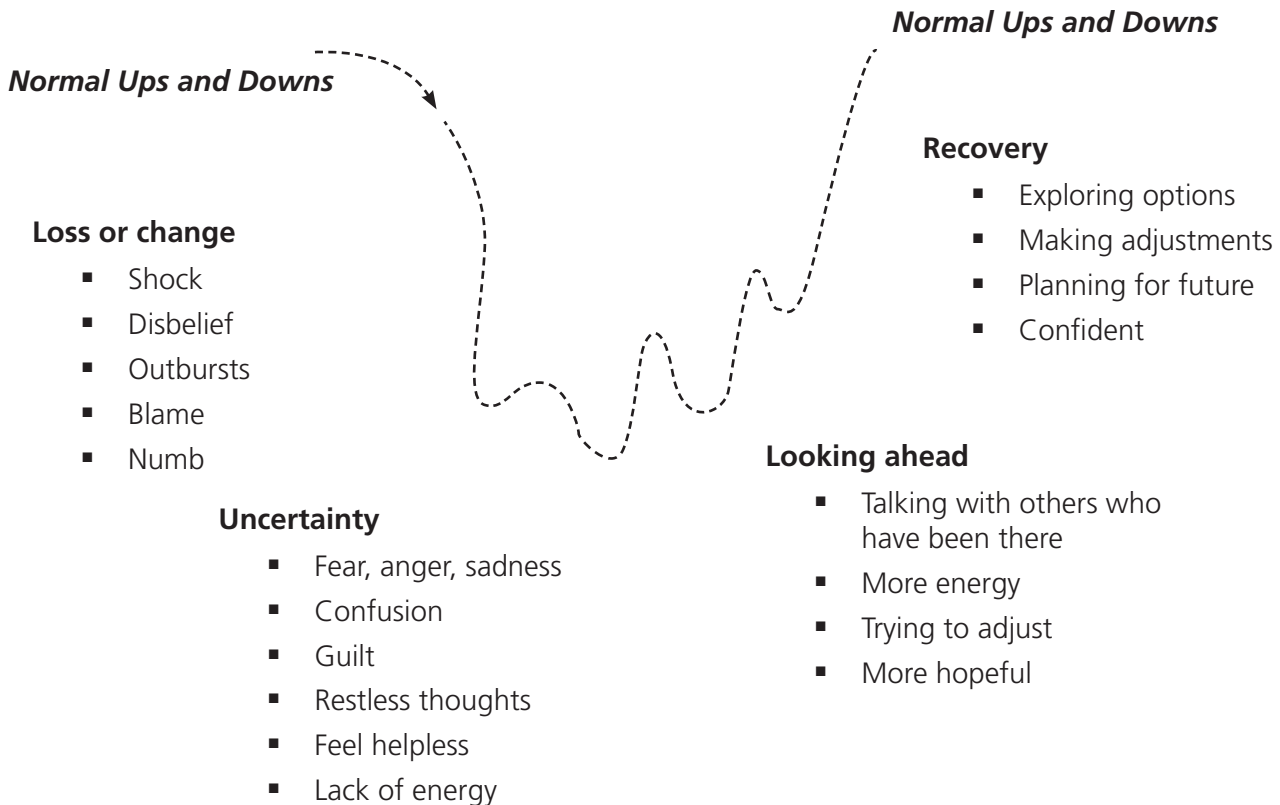
Counseling is a great resource for children and the people who take care of them during times of change. Many different types of counseling are available. Research your options and choose the program best suited for you. "Children of Divorce" programs are offered by agencies, schools, or churches and help children whose parents live apart. Parents or caregivers may also benefit greatly from counseling. Parents are often able to work through their adult feelings and conflicts with a counselor. This may help them work together better as parents in different homes.

Should children be involved in mediation?

Children whose parents live apart often feel they have to pick a side. This is a terrible position for any child. Coming to mediation can make that worse. Because we only have one or two sessions to work together, we cannot create the best way to include children. Sometimes counseling is the place for children to talk with parents about what they would like from their parents. Parents can gather all of this information and make decisions in mediation. Our program is designed specifically for the adults to discuss the decisions they need to make about the children's future. Mediators do not decide where children will live and do not make recommendations to the court.

Families in Transition

Adjusting to loss or change takes time and is different for everyone. Seeing some of the different stages of loss may help you understand the ups and downs caused by changes in your life. This information can be helpful as you try to plan for a better future.



Mediation and Families in Transition

Some people coming to mediation were married for a long time and others were never married. Some have not lived together for a while, others may be newly separated. Some may be relatives caring for children. The one thing everyone has in common in custody mediation is that they will be parenting from different homes.

The mediator will help you explore the details of scheduling, communication, and decision-making that make up a parenting plan. These details can help prevent confusion and misunderstanding. A good plan covers the concerns of all and makes the ups and downs of this time in your life a little easier, so that everyone can get on with the business of raising children.

Developmental Stages of Children

These guidelines have been developed using information from the book *Children of Divorce* by Mitchell A. Baris and Carla B. Garrity. This information might be helpful when creating a parenting plan that is sensitive to your child's stage of development. However, every family and child is different. Specific decisions concerning your children should be made according to your understanding of what is best for them. You are encouraged to consult with an expert in child development if you have additional questions related to your child's emotional development.

Infancy to 2½ Years Old

Developmental Tasks

Infants

- Learn to trust people and to feel safe with them
- Build attachment to caregivers so that healthy attachments to other people can be established later in life

Toddlers

- Begin to develop a sense of independence
- Become increasingly aware that they are a different person from their caregivers
- Develop use of language and begin crawling or walking
- Have increased ability and need to find comfort in other people and objects such as teddy bears and blankets

With Parents in Different Homes, Children May

- Feel a loss of contact with their caregivers
- Feel discomfort in a new environment

When Parents Fight, Children May

- Misbehave or demonstrate symptoms of regression (returning to behaviors that existed when they were younger)
- Demonstrate symptoms of insecurity and separation anxiety which could affect them in later developmental stages
- Experience difficulty trusting and attaching normally to parents and other people

2½ to 5 Years Old

Developmental Tasks

- Continue to build a sense of self
- Develop the ability to keep parents in their thoughts when separated from them
- Develop strong verbal skills in order to express their needs

- Toilet-train and develop ability to wash themselves
- Develop skills to regulate their emotions

With Parents in Different Homes, Children May

- Imagine that they are responsible for their parents not living together
- Imagine that they have the ability to bring parents back together if they behave
- Feel anxiety related to whether they will be well cared for
- Feel anxiety when alternating between the homes of each parent if reassurance and emotional safety are not provided

When Parents Fight, Children May

- Lose their mastery of previously attained developmental tasks which may complicate current and future phases of development
- Experience feelings of abandonment which may result in sadness, insecurity, and low self-esteem or may interfere with their present developmental stages

6 to 8 Years Old

Developmental Tasks

- Develop friendships and relationships beyond their immediate family
- Learn what is right from what is wrong
- Learn how to care about people and to negotiate their wants and needs with the wants and needs of others
- Learn increased self confidence

With Parents in Different Homes, Children May

- Deal with sadness, anger, and anxiety related to their parents no longer being together
- Blame themselves for their parents not being together and may think that they must find ways to bring their parents back together
- Fear losing one or both parents which may lead to feelings of anxiety

When Parents Fight, Children May

- Perform poorly at school
- Experience long term depression
- Become preoccupied with the fact that their parents are not together
- Dream about their parents reuniting

9 to 12 Years Old

Developmental Tasks

- Continue academic and life skill development
- Develop an increased sense of abilities

- Develop relationships with other children based on similar interests and skill levels
- Begin to relate to the world beyond family and identify with people outside of their immediate family

With Parents in Different Homes, Children May

- Feel protective of one or both parents
- Feel intense blame towards one or both parents
- Demand to have adult problems explained to them, as well as wanting to participate in fixing adult problems
- Become aware of their own hurt and angry feelings and may express them intensely
- Feel shame regarding the breakup of their parents

When Parents Fight, Children May

- Perform poorly at school
- Partake in lying or other deceptive behavior
- Form a strong alliance with one parent against the other
- Experience loneliness, depression, or low self-esteem

13 to 18 Years Old

Developmental Tasks

- Develop their own identity which may or may not be similar to that of other family members
- Feel the loss of childhood simplicity and dependence
- Develop sexual feelings and learn how to handle them
- Develop an understanding of society's expectations of them

With Parents in Different Homes, Children May

- Desire independence from their family before they are ready
- Reject one or both parents
- Feel embarrassment regarding the breakup of their parents
- Feel distress regarding parents dating and relating sexually to new partners
- Replace parents by becoming loyal to peers

When Parents Fight, Children May

- Become delayed in their entry into adolescence
- Act out through the use of drugs, alcohol, or sex
- Turn to gangs or unhealthy peer groups to attain a sense of belonging
- Doubt their own capacity to have successful relationships
- Place too much importance on their peer relationships or withdraw from peer relationships altogether

Legal Information

Because you are involved in the legal system, you may very well have legal questions. Mediators in the Custody Mediation Program do not provide legal advice or help. If you have legal questions concerning a separation, divorce, or child support, your best resource is an attorney who specializes in family law. Attorneys are trained to be legal advisors and advocates for their clients. Attorneys are able to handle all financial aspects of a custody plan. They also have the ability to combine parenting agreements reached through the Custody Mediation Program into other court documents when necessary. An attorney is able to help you fully understand the legal effects of decisions you make in mediation as well as explaining legal concerns that might be unique to your situation. Parents often find it helpful to ask an attorney the following questions:

Separation / Divorce

- How long do spouses have to be separated before they can be legally divorced?
- What are the benefits of creating a separation agreement with my spouse?
- What is included in a separation agreement and divorce decree?
- Is there a legal consequence if I date someone during the separation?
- What should I do if I am “served” papers?
- When is a divorce final?

Safety Concerns

- What should I do if I feel that my children or I am in danger from my spouse?
- What can I do if my partner violates a restraining order?

Custody

- What determines who has custody of the children?
- What happens to children if a court battle occurs regarding the children’s time with each parent? Will children be asked to testify?
- What is legal custody?
- What is the difference between sole custody and joint custody in terms of legal custody?
- What is physical custody?
- What is the difference between primary custody, joint custody, and split custody in terms of physical custody?
- Under what conditions can custody arrangements be changed?
- What are my legal rights as a mother? As a father? Do grandparents, step-parents, or other blood relatives have rights?

Nonparent Third-Party Custody Information

- When your case includes a grandparent, other relatives, or family friends, **consulting an attorney is particularly important.**
- Signing a parenting agreement with someone who **IS NOT** the biological or adoptive parent of the children **may change your parental rights.**
- Parents' **legal rights** to their children change when parents agree to a court order that allows a nonparent, third party to have legal custody and/or visitation of their children.
- An attorney is the only person who can legally give advice about how parents' legal rights will change by agreeing that a nonparent third party has custody and/or visitation of their children.
- Did you know that if you are seeking a parenting agreement to satisfy school requirements, you may not need a court order changing custody? Ask an attorney for information about N.C. GEN. STAT. § 115C-366.

Resources

Looking for an attorney?

The North Carolina Lawyer Referral Service provides names of lawyers who offer legal services to clients for one-half hour at a reduced cost. Legal fees should be discussed with the attorney.

North Carolina Lawyer Referral Service
PO Box 12806
Raleigh, NC 27605
1-800-662-7660
www.ncbar.org/public-resources/lawyer-referral-service

Also, the yellow pages of the telephone book contain information about attorneys who specialize in family law. Be aware that the mediator is not able to recommend specific attorneys.

Do I need an attorney?

While it is highly recommended that you at least consult with an attorney to understand your legal options, you may choose to represent yourself. This will take significant effort and research on your part. Clerks and other court staff cannot provide you with legal advice, only an attorney can do that. Investigate to see if your judicial district has a self-help clinic which provides the necessary paperwork at no cost to initiate court actions. (Court filing fees still apply.)

For a helpful video from Legal Aid of North Carolina, go to www.legalaidnc.org or www.lawhelpnc.org/custody.

Where can I find information about the North Carolina court system, my district, and the custody mediation program?

Visit www.NCcourts.gov.

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