

Family Law Mediation Orientation Video

(Transcript)

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Hi. Welcome to Clackamas County Resolution Service's orientation for family law mediation.

My name is Emily. I'm one of the mediators here at Resolution Services and I'll be your guide during this orientation.

Please note that at times I'll be highlighting legal information. This information is subject to change and is provided for informational purposes only. It's not legal advice.

I'll also be describing the process most people use. There are exceptions that might apply to you that won't be discussed. If your matter includes any exceptions, our staff will work with you to meet your needs.

Please also note that I may refer to you and your spouse or partner as "parties." "Parties" is a legal term for the people who are party to, or part of, a court action, such as your divorce or family reorganization. "Family reorganization" is a general term that also applies to those of you who are unmarried or in a domestic partnership.

Now, let's get started.

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If you have a family law case pending in Clackamas County, the court will order you to attend this orientation and participate in alternative dispute resolution, including mediation, unless an exception applies.

Please note that court-ordered mediation is voluntary. I know this sounds confusing. How can something court-ordered be voluntary? What this really means is that you're required to try to resolve your matter through some form of alternative dispute resolution, such as mediation.

The emphasis here is on trying. If you've given mediation a try and feel it's not right for you, you're free to end the process.

Of course, if you have serious safety concerns, you probably won't be required to participate in mediation at all. We'll return to this topic a little later.

While on the subject of court requirements, please be informed that if you have minor children, you're also required to take a parenting education class. Information about this class can be found on our website. We strongly recommend you take the class before you begin mediation.

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Here at Resolution Services, we're happy to help you meet the county's mediation requirement.

That said, our services are only one of many ways to meet the requirement. Private mediation and other forms of alternative dispute resolution are also acceptable. Collaborative law and arbitration may also be useful. Judicial settlement conferences satisfy the requirement too.

You're free to use any of these services at your own expense.

If you're feeling creative, you may even enlist the help of a mutually agreed upon family member, friend or clergy person.

As you can tell, there are many forms of alternative dispute resolution, but our focus in this orientation is on mediation.

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"Mediation" is a confidential process where two or more people discuss disputed issues and attempt to reach agreement with the assistance of a neutral third party.

Mediation is an informal process that occurs outside of court. It's your process. You and the other person are the decision makers, NOT your mediator, NOT the judge who ordered mediation and NOT anyone's attorney.

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Even though you're in charge and mediation can be structured however you and the other party want, most mediations typically work like this:

First. You register for mediation by completing an intake form online. If you have safety concerns or need accommodations, including language interpretation, please let us know on your intake form. You may also request to meet in separate Zoom rooms

where you and the other party can't see or hear one another. This is called "shuttle mediation."

Once both parties have registered, we'll email you instructions about how to schedule your first session online. Unless you have a protective order, you'll need to work together to schedule your first session.

Next, you'll receive an email with the date and time of your first session and a Zoom link. All mediations are on Zoom unless you both agree to another arrangement. Sessions are usually 90 minutes.

In session, you and the other party, with the mediator's help, will share goals, identify issues and build an agenda. Then, you'll brainstorm options, exchange proposals and counterproposals, evaluate proposals, and reach tentative agreements, if possible.

At the end of the session, if you and the other party agree, your mediator will schedule another session. Typically, it takes 2 to 4 sessions to resolve most issues. However, it could take longer.

If you have an active family law case in Clackamas County, the court will pay for your first two sessions. Additional 90-minute sessions are \$187.50, (or \$93.75 each). This is subject to change. Please check our website for current rates.

If the court waived fees in your family law case, your mediation fees will also be waived. That's the process in a nutshell.

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I'd like to circle back and talk a little more about joint mediation and shuttle mediation.

Your decision to meet jointly or separately (as in shuttle mediation) isn't a one and done decision. If you're in shuttle, you and the other party may later decide to try joint mediation and vice versa. If you're meeting jointly, you may try shuttle.

Another thing can happen too. At any time, you, the other party, or the mediator may ask for a caucus. A "caucus" is a private meeting between the mediator and one of the parties. You can use this time to discuss sensitive information, vent, or however you wish. The important thing is that it's your time and you get to decide whether the mediator may share your information with the other party or not. If you ask the mediator not to share the information, it will be kept confidential between you and the mediator. I'll explain more about confidentiality later.

Usually, the decision about how you will meet with the other party is a matter of personal preference.

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However, there are a few situations when joint mediation is not the best option and may not even be allowed.

For instance, if there's a power imbalance and one party has a controlling influence over the other, the party subject to control may prefer shuttle mediation. The same holds true for parties with safety concerns.

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If these safety concerns include a protective order – such as a Family Abuse Prevention Act Restraining Order (or FAPA), a Stalking Protective Order, an Elderly Persons and Persons with Disabilities Abuse Act Prevention Order or Sexual Abuse Protection Order – then the choice about mediation belongs to the protected party. In these cases, either party can request a waiver from the court. There are instructions on the Order for Mediation. If the requirement is not waived, the protected party must request mediation.

With our office, you request mediation by completing an intake form. You may include any information you want your mediator to know about safety concerns on your intake form. You may also email this information to your mediator. Your mediator's contact information can be found in the description section of every appointment confirmation.

As you can tell, there's some leeway with protective orders.

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However, if a criminal no contact order is in place, mediation is NOT allowed under any circumstances. If this applies to you, please look on your Mediation Order. It provides instructions on how to request a waiver from the court.

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Now, let's talk about who may participate in mediation.

If a petition and response has been filed in your matter, the court will order you to participate in mediation. Recall, this is called "court-ordered mediation."

Only certain people can attend court-ordered mediation. This includes you, the other party and the mediator. If the parties agree, attorneys and children may also participate.

Children participate in a special way. This is called a "youth interview." At these interviews, your children provide input for you and the other parent to consider before making important decisions. A trained mediator speaks to your children privately and will

only share information with your children's permission. Children, like adults, are protected by confidentiality, unless an exception applies.

If you choose to mediate your matter before filing a petition or other documents, you're not subject to court requirements. This is called "voluntary" or "pre-filing mediation." Anyone may attend voluntary mediation as long as both parties agree. Since there's no filing and the court isn't involved yet, you'll be charged for pre-filing mediation, if you decide to go this route.

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Regardless of which route you choose (court-ordered or voluntary mediation), we're here to help. We use a variety of mediation styles, including evaluative, transformative and facilitative but we're primarily facilitative mediators. This means we facilitate or assist you and the other party as you work together to resolve your disputes.

We're impartial. We don't take either party's side.

Sometimes, we'll share legal information, but NEVER legal advice (this would compromise our impartiality). This is true even for lawyer-mediators on our team.

We have other ways of assisting you, including offering support, helping with communication and providing relevant information to help you make informed decisions.

All of us at Resolution Services are court-connected mediators, meaning we've met the court's requirements to mediate family law matters, including financial issues. We follow ethical standards established by the Oregon Mediation Association and are subject to the authority of Clackamas County.

We all have at least a master's degree plus multiple years of experience. Also, we're required to participate in training on an ongoing basis.

Most importantly, we believe in mediation and look forward to helping you and your family. Mediation has many positive features. We've already discussed a few of these features. Recall that mediation puts you in charge (you and the other person are the decision makers) and mediation is voluntary (you participate only if you want to).

Confidentiality is another key feature of mediation.

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As you probably know, confidentiality means keeping something private. In mediation, everything that is said, done or written must be kept private and not disclosed to anyone outside mediation. This information is called "mediation communications."

Confidentiality applies to anyone who is part of your mediation. This includes you, the other party, your mediator and sometimes other mutually agreed upon participants, like attorneys or children. Support staff at Resolution services are also bound by confidentiality.

Because of confidentiality, no one, other than agreed upon participants, can be with you or be in a position to hear you while you're in a Zoom session.

You can't record sessions on Zoom. Similarly, you can't share confidential mediation communications with anyone on social media.

You may be wondering why confidentiality is so important. And here's why:

Mediation communications can't be used as evidence in court. All participants must agree that they won't subpoena Resolution Services staff to testify about mediation communications.

Because of these protections, confidentiality encourages free dialogue. You can consider options in mediation without fear of it being used against you in court.

This is true for the most part. However, there are a few exceptions. We, as mediators, are mandatory reporters. If we have reason to believe that a child, elderly person or disabled person is being abused or neglected, we must report it to the appropriate authority. We may also be required to report threats of any future crimes.

Confidentiality has some exceptions for you too. You may share mediation communications with other people with whom you have a legally recognized confidential relationship, such as clergy people, doctors, or lawyers.

While on the subject of lawyers, legal advice is strongly encouraged. If possible, you should consult with an independent attorney throughout the mediation process and especially before signing legally binding documents.

Confidentiality, and all the exceptions we've discussed, are outlined in the Consent and Confidentiality Agreement that you're required to sign before your first session. Please review it carefully. Your mediator can answer any questions you may have.

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Perhaps you're wondering how the court fits into this discussion about confidentiality. After all, my colleagues and I are all court-connected mediators.

Rest assured that we don't share mediation communications with the court. In fact, we're bound by the law and professional rules NOT to share this information.

The only thing we're required to report is that you've participated in mediation (even if you just gave it a try). We must also indicate whether you reached any agreements, but we can't provide any specific details about the substance of your agreements.

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Now, let's take a look at the topics you'll likely discuss during mediation. Family law matters involve three major topics: legal custody, parenting time and financial issues.

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Let's talk about these topics in turn. First there's legal custody, which is decision-making about your minor children's education, non-emergency healthcare, religious training and residence.

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There are two types of legal custody: joint and sole. Joint custody is when both parents have shared authority to make major decisions. Sole custody is when one parent alone has the authority to make these decisions.

The court can't order joint custody unless both parents agree. If parents can't agree, the court will choose one parent to have sole custody.

Also, you should know that you can modify legal custody later if there's been a substantial change in circumstances and modifying custody would be in your children's best interests.

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And that's legal custody. Please don't confuse it with physical custody. In Oregon, we don't use the term physical custody. Instead, we use the term "parenting time" to refer to the time each parent has to care for their children.

A Parenting Plan sets out the schedule for each parent's parenting time. Contrary to popular belief, there's no "standard" or "default" parenting plan in Oregon. Your plan should be tailored to your family's specific needs. That said, it must include a regular weekly schedule and address any special schedules for holidays, vacations, and non-school days.

Parenting Plans may also address other child-related issues, like transportation, travel, new partners and safety.

Like custody, parenting plans are modifiable.

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Now, let's switch gears and take a look at the financial issues addressed in mediation. These issues include: child support, spousal support and distribution of assets and debts.

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Let's start with child support.

Children have the right to receive financial and emotional support from both parents, even if their parents don't live together or were never married.

Child support is a monthly payment that one parent pays to the other parent to ensure that their children maintain a similar standard of living in both parents' homes and have their basic needs met. It is intended to cover things like housing, transportation, food, medical, childcare, educational needs, and clothing. Child support can be used by a parent for support of the entire household (like paying rent or a mortgage, car repair, and groceries). It is not intended to cover extracurricular activities, camps, and uninsured medical expenses.

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Child support is calculated using Oregon's Child Support Calculator. The calculation is based on several factors such as gross income, number of overnights, number of joint and non-joint children, spousal support and daycare and healthcare expenses.

The calculated amount is presumptively correct, plus or minus 15 percent. You may request a lower or higher amount and the court may approve it if certain factors apply.

Child support is available for your children at any stage in your matter, even if it was not ordered in your original judgement. Also, the amount of support may be modified after judgment if there's been a substantial change in circumstances.

Before ending this discussion on child support, you should know that Oregon law, unlike the law in most states, provides for the support of children up to age 21, if they qualify as a "child attending school."

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Next. Let's discuss spousal support.

There are three types of spousal support. First, there's compensatory support to compensate a party who has contributed to the career advancement of the other party. Second, there's transitional support to assist a party reenter the workforce. Lastly, there's maintenance support for a party unable to meet their needs without financial assistance from the other party.

A party, of any gender, may be awarded one or more types of spousal support or no support at all.

There's no official calculator for spousal support. Therefore, it may be helpful to consult with an attorney.

Also, if spousal support is not ordered in your original judgment, it can't be added at a later date unless an exception applies. However, if spousal support was in the original judgment, it may be modified.

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The last financial matter we need to discuss is the division of assets and liabilities or debt.

Under Oregon law, marital (or shared) property is subject to equitable distribution. Such distribution is fair but not necessarily equal. However, in mediation you can divide property however you both mutually agree.

Property includes real property (like the family home) and personal property (like vehicles, bank accounts, stocks and bonds, retirement and debt).

Any property not distributed in your original judgment (which contains the agreements you reached in mediation), cannot be distributed at a later date unless an exception applies. Likewise, property division cannot be modified at a later date unless an exception applies (like hiding assets).

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As you've probably gathered, there are many issues to resolve in mediation. So, it should come as no surprise that there are several possible outcomes. Some parties reach full agreement on all issues. Others reach partial agreement, leaving some issues for the court or some other method of conflict resolution to resolve.

A few parties don't reach agreement on any issues. This can occur for a variety of reasons and doesn't reflect poorly on the parties. There is no one right outcome in mediation.

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If you reach full or partial agreement on a significant number of issues, you may be wondering how these agreements become part of a judgment that is signed by a judge and finalizes your divorce or family reorganization matter.

You have a couple of options.

If you and the other party agree, you can use email summaries or memos prepared by your mediator to guide you as you complete fill-in-the-blank, do-it-yourself documents available online from the Oregon Department of Justice. You'll need to complete and file these documents on your own. Resolution services can't do this for you.

Another option is to use a mediated settlement agreement, or MSA. An MSA is a written statement of all your agreements prepared by your mediator. MSAs must be signed by both you and the other party to signify your mutual agreement. An MSA, plus additional documents, may be filed with the court. If the court approves of your MSA, it will be incorporated into your judgment.

Please note that you're responsible for filing the MSA as well as completing and filing the other documents. Resolution services can't do this for you.

Also, there may be a cost associated with preparing your MSA. And not all agreements can be reduced to MSAs. Talk with your mediator to see if an MSA is right for you.

Lastly, you may decide that you want professional help to handle your matter for you. Our Family Law Clinic here at Resolution Services can draft and file all of your documents. These services are billed at \$125 per hour and are subject to change. Filing fees are not included. Alternatively, a private attorney or document preparation service can provide these services.

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Now that you've learned about mediation from start to finish, you can appreciate that mediation has several advantages over the traditional, adversarial court process. As we've already discussed, you're the decision-maker in mediation, not the court that is a stranger to your matter. This means that you're free to make whatever decisions you feel are best for your family. These decisions tend to be more durable, meaning you and the other party are less likely to re-litigate issues down the line.

And, if you have children, you'll have fewer issues down the line thanks to the skills you've learned in mediation, such as communication and problem-solving. These skills reduce conflict, which in turn benefits your children. Research resoundingly tells us that children do best when their parents are able to work together to resolve problems.

With mediation, you get all of these advantages for a fraction of the price of litigation. Not only is mediation cheaper, but it's also faster. You set the timetable, not the court.

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The only question that remains is are you ready to make the most of mediation? It's really not that hard.

Come to mediation prepared. Bring the relevant information you need to make informed decisions. This may include your budget, pay stubs, tax returns, bank statements, mortgage balances, retirement information and car loan documentation.

More important than information, is the state of mind and attitude you bring. If you're struggling with emotions, that's understandable. Divorce or family reorganization is distressing. Do what you can to regulate your emotions.

Let good faith be your guide. Be honest and forthright. Come to mediation with a sincere desire to work with the other party.

Listening to the other party helps too. If you understand the other party's interests, you can make proposals they'll say "yes" to. This is important because the only thing standing in the way of an agreement is the other party. If they say "no" to your proposals, there's no agreement.

Of course, in every mediation there are issues that are nonnegotiable. And that's OK. Don't compromise your principles. Only make agreements that you can live with.

Lastly, remember to consider your children's needs. Although children may participate in mediation, most don't. Therefore, it's up to you to consider their best interests when creating agreements.

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This completes orientation. Thank you for your participation.

I wish you and your family all the best in mediation or wherever your journey in family reorganization takes you.

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Resources/Links

- Clackamas County Resolution Services, Family Law Mediation, <https://www.clackamas.us/ccrs/domestic.html>

- Clackamas County Mediation Requirement, Clackamas County Supplementary Local Rule (SLR) 8.017,
https://www.courts.oregon.gov/rules/Documents/Clackamas_SLR_2022.pdf
- Mediation Orientation, Oregon Revised Statutes (ORS) 107.755,
https://www.oregonlegislature.gov/bills_laws/ors/ors107.html
- Parenting Education Class Requirement, SLR 8.015 and ORS 3.425,
https://www.courts.oregon.gov/rules/Documents/Clackamas_SLR_2022.pdf;
https://www.oregonlegislature.gov/bills_laws/ors/ors003.html
- Clackamas County Parenting Education Class Registration Link,
<https://www.clackamas.us/ccrs/parents.html>
- Mediation (defined), ORS 36.110,
https://www.oregonlegislature.gov/bills_laws/ors/ano036.html
- Exemption from Mediation Requirement, SLR 8.017,
https://www.courts.oregon.gov/rules/Documents/Clackamas_SLR_2017.pdf
- Mediator Ethics, Oregon Uniform Trial Court Rules (UTCRC) 12.040,
https://www.courts.oregon.gov/rules/UTCRC/2024_UTCRC_ch12.pdf
- Oregon Mediation Association Core Standards of Mediation Practice,
https://ormediation.org/wp-content/uploads/2016/04/CoreStandardsFinal_2005.pdf
- Confidentiality of Mediation Communications and Agreements, ORS 36.220, 36.222, and 36.234, https://www.oregonlegislature.gov/bills_laws/ors/ors036.html
- Legal Custody, ORS 107.169,
https://www.oregonlegislature.gov/bills_laws/ors/ors107.html;
<https://www.courts.oregon.gov/forms/Documents/ParentingPlanGuideGlossary.pdf>
- Parenting Plans, ORS 107.102,
https://www.oregonlegislature.gov/bills_laws/ors/ors107.html
- Child Support Law, ORS 25.270 -25.290,
https://www.oregonlegislature.gov/bills_laws/ors/ors025.html
- Oregon Child Support Calculator, <https://www.doj.state.or.us/child-support/calculators-laws/child-support-calculator/>
- Child Support for “Child Attending School,” ORS 107.108,
https://www.oregonlegislature.gov/bills_laws/ors/ors107.html

- Spousal Support, ORS 107.105,
https://www.oregonlegislature.gov/bills_laws/ors/ors107.html
- Property Division, ORS 107.105,
https://www.oregonlegislature.gov/bills_laws/ors/ors107.html
- Clackamas County Resolution Services Family Law Clinic,
<https://www.clackamas.us/ccrs/domestic.html>