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Mediation in Custody and Visitation Cases in New York Family Court (ADR)

Mediation, which is also called alternative dispute resolution or ADR, is becoming an increasingly common tool in Family Court in New York State. As the name suggests, ADR is an alternative to the adversarial model of resolving disputes and when properly used can be a useful way to come to an agreement about the custody of your child(ren).

When you file a petition for custody or visitation in Family Court, and you go to court for the first time (the arraignment) the judge may ask you several questions including whether you want to have an attorney assigned to represent you if you cannot afford to hire an attorney. You may also be asked whether you would like your custody or visitation petition handled through mediation.

What is mediation?

Mediation – which is also called alternative dispute resolution – is what happens when the parties - with or without their lawyers - meet with a person who is trained to help the parties come to an agreement about what is best for their children without the formal court process of pre-trial conferences, trial and post-trial appeals.

What are the benefits of mediation?

The biggest benefit of mediation if it is done properly is that it allows you and the other party to be actively involved in deciding what is best for your children. Each of the parties meets with the mediator and tells the mediator what they think would be the best custody arrangement for their child(ren). The mediator then tries to get the parties to agree which generally involves compromise by both parties. Sometimes that works and sometimes it doesn't. If it does, the court will grant an Order which includes the terms that you agreed to and you will get a written Order signed by the judge just like you would if you did not do mediation.

Another benefit of mediation is that it's FAST. Whereas pre-trial conferences, trial and post-trial appeals can take months or years, mediation can be over in a single session of an hour or two.

Will the attorney for my children be involved in the mediation?

Generally not. It's usually just you and the person you filed the petition against or who filed the petition against you and the mediator. However, your attorney should make sure you are informed about your rights and the law which would apply in your case. Often the agreement is not final until the attorneys review it.

Where does mediation take place?

In many courts, the mediator meets with you in the same building as where the court is held, except you'll meet in a conference room rather than the courtroom.

Is mediation right for everyone?

Probably not. If the person you filed the petition against – or who filed the petition against you – was violent towards you or threatened you or “put you down” in front of the child(ren) during your relationship, then you may not want to be involved in mediation if you think the person who was abusive towards you will try to force you or manipulate you into accepting something you don't want to accept. A trained mediator should be able to tell when that's happening and stop it from happening, but if it's not obvious, they may not realize it's happening.

Mediation may not be right for you if the person who filed the petition against you is not a parent of your child(ren) and is asking for custody or visitation for the first time . Since a non-parent – such as the child's grandparent the child's aunt or the child's uncle who files a petition for custody against you must show that there are “extraordinary circumstances” to get custody, you will be giving up your rights if you agree to custody without the other side proving there are extraordinary circumstances. You may want to negotiate an agreement through family counseling, but NOT agree to it being a court order.

Also, if you agree to the Order – whether in mediation or in a court proceeding – you do not have grounds to appeal.

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