

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR



Kristin Ruth is a long-time family law attorney and former 10th District Court Wake County Judge. She represents clients in all aspects of family law, including divorce, child custody, child support, and equitable property distribution. She brings more than 23 years of courtroom and mediation experience to her practice. She is an avid writer and frequent guest speaker at national and international events on issues covering child support and ethics.

Family Law Mediation: When is a good time?

November 28, 2018 | by

Mediation can be an effective alternative to litigating your marital and family issues while avoiding the frustration and complexity of court proceedings. Mediation can occur at various stages of your separation and divorce. As a certified superior court and family financial mediator, I am frequently asked: *"When should we mediate?"*

Pre-filing a lawsuit:

In matters of family law, it is common to mediate custody, equitable distribution, child support, post-separation support, and alimony before filing a lawsuit. The goal of mediation is to resolve all issues, enter into a global resolution, and memorialize the same in a separation agreement setting forth all the provisions the parties have agreed upon.

However, the key to a successful pre-filing mediation is transparency and trust. Both parties need to be comfortable with their personal knowledge of the marital finances and able to trust the other party in providing and sharing the documents required to negotiate a fair and equitable distribution of assets and debts.

If there is an unwillingness by either party to share financial records involving bank accounts, loans, retirement accounts, private or business assets that each may have at the date of separation, these individuals run the risk of making important decisions that are not in their best interest. Verifying documents and accounts before mediation is essential. It is not uncommon to request the mediator to assist in ascertaining and verifying documents during the mediation process.

Most attorneys who represent clients in pre-filing mediation will exchange financial documents in good faith and follow the same requirements under the local rules as if a lawsuit has been filed. However, you do not receive the same protections for accountability from the court in pre-filing as you will in mediating after a suit has been filed.

Post-filing a lawsuit:

Once a lawsuit is filed many parties choose to attend mediation in hopes of settling their

issues before having to appear in court and thus incurring significant costs in preparations for the hearings. The parties have several choices in how they memorialize their custody, support or equitable distribution settlements if an agreement is reached in mediation. Mediating before a scheduled court hearing allows the parties to control how they decide to resolve their disputes regarding their finances and children while still maintaining the benefit of the court's protection of enforceability through court orders. In custody cases, the court mandates mediation for the parties under NC Gen: Stat. § 50-13.1. If unsuccessful, the parties can participate in private mediation to again try to resolve the remaining family and financial issues outside the court process. Memorializing the negotiated settlement in consent orders enables the Court to enforce the order through the contempt process.

Participation in mediation has proven to be a valuable alternative to costly and time-consuming court litigation. Sometimes experiencing just one of the many hearings is enough for folks to inquire about the mediation process. While mediation can occur at various other times throughout your separation and pending divorce, it is best to make sure you are prepared with full disclosure of all the financial documentation you'll need to make the best use of the mediator's time. Your attorney can guide you in choosing an appropriate time to mediate as you begin to strategize, organize, and prepare to negotiate the decisions that ultimately affect the most personal aspects of your life.

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