

Elder or Probate Mediation

Conflicts about caring for an elderly family member or dealing with a family member's estate are often very emotional and can destroy relationships. Mediation is an alternative for addressing and resolving these conflicts.

What is Mediation?

Mediation is an informal process where a neutral person (a "mediator") helps people in conflict to resolve issues and find solutions. A mediator talks with each party in the conflict and assists with facilitating an agreement to resolve the parties' conflict. Each party has the opportunity to tell the mediator their side of the story and have their concerns heard.

If the parties are able to come to an agreement, they sign a written agreement that states the terms of their agreement. This written agreement may be called a settlement agreement. An agreement signed by both parties is a contract that is enforceable under Colorado law. If an agreement is then approved by the judge in your case, it becomes an order of the court.

What are the Benefits of Mediation?

Mediation has many benefits.

- Mediation can resolve disputes faster than going to trial. If the parties reach an agreement that settles all of the issues through mediation, pursuing a trial in court is no longer necessary.
- Mediation may save you money. A mediator charges a fee for his or her time to assist the parties. However, the cost of a mediator's fee is usually much lower than the cost of a party's attorney fees for pursuing a case to trial in court.
- Mediation is confidential. Statements you make to a mediator are not allowed to be shared with the other party in the conflict unless you agree. Additionally, statements made in mediation cannot be used as admissions of fault or guilt in the court process later if the parties are unable to reach an agreement during mediation.
- Mediation is informal. The parties do not follow court rules for presenting evidence and testimony of witnesses. Mediation is a conversational process. A mediator reviews documents and talks with each party to understand that party's side of the conflict and how the parties can resolve their conflict.
- Mediation allows parties to control the outcome of their dispute. Parties in a mediation decide for themselves how their conflict is resolved and what their

agreement says. If the issues are not resolved in mediation, a court decides the outcome of the case for you.

- Mediation is readily available. Parties can decide to enter into mediation before a court case is filed. Additionally, mediation can be helpful for non-legal disputes when family members need assistance resolving conflict in their relationships and communicating with each other.

What Types of Disputes Are Appropriate for Elder or Probate Mediation?

Mediation is helpful for a broad range of disputes, including:

- Wills
- Trusts
- Conservatorships
- Guardianships
- Health care
- Respite care and support for caregivers
- End-of-life decisions
- Familial disputes
- Information sharing and communication issues

While many cases are appropriate for mediation, talk to your mediator or attorney about whether your case is suitable for mediation.

What is a Mediator's Role?

- A mediator is impartial. The mediator listens to all parties and points of view.
- A mediator effectively guides parties to discuss and resolve issues and conflicts.
- A mediator assists in communication. The mediator helps parties frame their perspective in a productive manner.
- A mediator respects confidentiality. When issues are discussed in a private session with one party, the information is not made public.
- A mediator does not impose a solution or agreement on the parties.
- A mediator does not provide legal advice.

How do I find the Mediator that's right for me and my case?

A mediator should be someone who is qualified to handle your dispute. If your conflict is a legal issue or court case, the mediator should have knowledge and experience in the specific legal issues involved in your dispute. A mediator for legal disputes can be a retired judge or an attorney. You will want to talk to potential mediators about their experience,

training and continued education to maintain their skills.

A mediator should also be someone who has the experience to handle the personal dynamics of your dispute. A mediation with multiple parties will be more complicated than a mediation with only two parties.

Resources to Find a Mediator

Colorado Judicial Division

Many Colorado courts have lists of mediators in their District. The Colorado Judicial Branch Office of Dispute Resolution also has a list of mediators that meet certain qualifications. <https://www.courts.state.co.us/Administration/Unit.cfm?Unit=odr>

Denver Bar Association Court Mediation Services

Court Mediation Services provides affordable mediation services to the community and courts. <https://courtmediationservices.org>

Mediation Association of Colorado (theMAC)

The Mediation Association of Colorado provides a Find a Mediator tool on their website. <https://coloradomediation.org>

Colorado Bar Association

Some mediators are listed in the Colorado Bar Association Licensed Lawyer search engine. Under Practice Area, choose Alternative Dispute Resolution. <https://www.cobar.org/Licensed-Lawyer>

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