

# THE STATE OF NEW HAMPSHIRE JUDICIAL BRANCH

<http://www.courts.state.nh.us>

## IMPORTANT INFORMATION FOR ATTORNEYS ABOUT DIVORCE/PARENTING/CIVIL UNION DISSOLUTION MEDIATION IN THE FAMILY DIVISION

### ORDER OF THE COURT.

The Order of Appointment of Mediator is an order of the court. Please remind your client of the importance of complying with this and with all court orders.

### MEDIATION IS SCHEDULED WITH NH CERTIFIED MEDIATORS WHO HAVE CONTRACTED WITH THE COURT.

NH Certified Marital Mediators must meet the standards set forth in RSA 328-C. These standards include, among other things: (1) An applicant must be of good character, (2) Satisfactory completion of a program of instruction approved by the board and at least 48 hours in length, including at least 8 hours in domestic violence and components in family dynamics and relevant law; (3) Complete an internship approved by the board of at least 20 hours in length with a certified marital mediator or certified marital mediation program; (4) Submission of a completed application to the board; (5) Submission of at least 3 recommendations satisfactory to the board from persons who have participated with the applicant in marital mediation work.

In order to obtain a contract with the court, a NH Certified Mediator must submit an application to the Judicial Branch, provide references, participate in an interview with a mediation panel consisting of, at a minimum, a Judge or Marital Master and a court administrator, take follow-up steps to satisfy any inquiries of the interview panel, and agree to the terms of the judicial branch contract, including an initial probationary period.

### WHAT ARE THE STANDARDS OF PRACTICE FOR CERTIFIED MARITAL MEDIATORS?

New Hampshire Certified Mediators adhere to Model Standards of Practice for Family and Divorce Mediation. These standards can be found at <http://www.nh.gov/marital>. The model standards include, among other provisions, expectations that mediators will encourage parties to seek independent legal advice throughout the mediation process.

### SHOULD YOU ATTEND MEDIATION WITH YOUR CLIENT?

Some attorneys elect to attend the individual mediation sessions with their clients. Others may choose to meet with their clients prior to and/or after a session, or to be available by phone for consultation during the mediation sessions. These decisions are based upon numerous factors including the client's needs, their resources, the lawyer's style and the issues in the case. It will be important for you to discuss this with your client prior to first appearance. It is most helpful for you to attend first appearance with your client, especially if you are planning to attend the mediation sessions. If you are not planning to attend first appearance, but you are still planning to attend the mediation sessions from the start, then please provide your client with dates that you will be able to attend mediation and ask your client to bring those dates to the first appearance and to share those dates during the scheduling process.. That will ensure that the mediation is scheduled at a time when you and your client are both available, along with the other side. Doing this will help the mediator avoid having to reschedule the mediation session after first appearance when they are typically set. It will be more efficient for you, the parties, the mediators and the court staff. Since most initial mediation sessions are scheduled at the courthouse, knowing the usual mediation days of the week at each court location will be useful to you. For this information, please check with the clerks or case managers

IF YOU ARE REPRESENTING A CLIENT AND THE OTHER PARTY IN THE CASE IS SELF-REPRESENTED, THIS CAN POSE CHALLENGES FOR THE MEDIATION PROCESS IN SOME CASES. WHILE YOU AS COUNSEL FOR YOUR CLIENT ARE MOST CERTAINLY ENTITLED TO BE PRESENT WITH YOUR CLIENT DURING MEDIATION, IT IS HELPFUL TO THE MEDIATOR TO LET THEM KNOW WHETHER YOU ARE WILLING TO CONSIDER DIFFERENT OPTIONS TO ADDRESS THIS SITUATION. ONE OPTION, FOR EXAMPLE, MIGHT BE FOR THE MEDIATOR TO USE A SEPARATE CAUCUSING MODEL. THERE ARE OTHER OPTIONS AS WELL. PLEASE WORK WITH THE MEDIATOR (WHO HAS A DUTY TO ENSURE A FAIR PROCESS), TO FIND THE BEST SOLUTION FOR THE PARTICULAR CASE YOU ARE INVOLVED WITH, SO THAT EVERYONE IN THE MEDIATION WILL BE ABLE TO HAVE CONFIDENCE THAT THE PROCESS IS FAIR. MEDIATION IS TYPICALLY SCHEDULED AT THE CONCLUSION OF FIRST APPEARANCE.

**THE FIRST MEDIATION SESSION IS TYPICALLY SCHEDULED WITHIN 30 DAYS OF FIRST APPEARANCE.**

Issues surrounding the children should be resolved, at least on a temporary basis, as soon as possible after the action is initiated. To avoid the risk of uncertainty, the Family Division strives to schedule the initial mediation session in each case within 30 days of First Appearance so that these important decisions are made by both parents, providing stability for the children early in the process.

**WHAT SHOULD BE DONE IF A MEDIATION SESSION MUST BE RESCHEDULED?**

Since the parties agree upon the date and time for mediation at the end of the First Appearance session, rescheduling should not be necessary. If something unexpected arises and there is no choice but to reschedule, do NOT file a motion with the court. Work with the mediator to find an acceptable date and time for the mediation. NOTE: THE MEDIATOR HAS SET ASIDE TIME FOR EACH MEDIATION SESSION. YOUR CLIENT'S FAILURE TO APPEAR AT MEDIATION WILL RESULT IN HIM/HER BEING CHARGED FOR THE MEDIATOR'S TIME UNLESS RESCHEDULED WITH THE MEDIATOR SUFFICIENTLY IN ADVANCE OF THE SESSION.

**MEDIATION CAN ADDRESS ALL ISSUES IN DISPUTE.**

Although the initial mediation focus is often on the children, mediation often resolves all issues in the action.

**MEDIATION MAY TAKE SEVERAL SESSIONS.**

Mediation is typically, but not always, scheduled in two-hour sessions. Mediation will often take numerous sessions. The needs of the parties determine how far apart in time subsequent mediation sessions should be scheduled. Often, after the initial decisions are made about the children either on a temporary or permanent basis, the parties need time to gather financial information pertaining to their assets. Although mediation will typically be ordered to take place within 30 days of First Appearance, there is no requirement that the mediation process be completed by a certain deadline. As long as the parties are actively engaged in the mediation process, the court will not require the parties to complete mediation in a set time frame.

**TEMPORARY HEARINGS.**

As a rule, parties must attend at least one mediation session before a temporary hearing will be scheduled by the court. However, if unique or emergency facts necessitate a temporary hearing before mediation, a motion must be filed supporting this request. If parties need a temporary hearing after attending a first mediation session, the hearing will be scheduled within weeks of the first mediation session. Subsequent mediation sessions may occur, even if the parties attend a temporary hearing after the first session.

**MEDIATION WHEN A CASE COMES BACK TO COURT AFTER THE FINAL DECREE.**

Parties who return to court for modification of an order or for other relief after a decree has been issued may be ordered to attend mediation if deemed appropriate by the court.

**SUPREME COURT RULE 48-B OUTLINES THE FEE AND PAYMENT ISSUES FOR MEDIATION.**

If the parties do not qualify for the GAL/Mediator fund, payment is expected at each mediation session.

**MEDIATION REPORT.**

At the culmination of each mediation session, the mediator submits a Mediation Report to the court. This report notifies the court when the mediation process is completed or whether the parties contemplate subsequent mediation and includes the date of the next session. The mediator is required to file the report within 3 days of the mediation session. When further mediation is needed, it is important that parties work with the mediator to set the next session date so that the parties can plan around this date and so that the mediation report can be completed and filed within the 3 day time frame.

**MEDIATION IS NOT RIGHT FOR EVERY FAMILY.**

RSA 461-A:7 sets forth reasons why the court may find it inappropriate to order mediation in a particular family. The time to make the court aware of these factors is at the end of the First Appearance session, or in unique or emergency situations, in advance of the First Appearance session by written pleading.

**MEDIATION WHEN THERE IS A FINDING OF DOMESTIC VIOLENCE.**

If all parties agree, mediation can occur if there is a protective order in place pursuant to RSA 173-B. However, mediation in these cases MUST occur at the courthouse and may not take place at an offsite location.