

## To Mediate a Modification of Visitation, Support, or Custody

I hope you will read the information below and decide to mediate your divorce settlement without all the emotion and hurt feelings an ugly court battle can generate. A mediation can be one or more meetings with the parties involved and the mediator to discuss the issues involved in ending the marriage in a manner acceptable to both parties. If both parties do not want to discuss the issues face to face, the mediator can meet with each party separately to determine the best way to settle the issues. Any information given by any party to the mediator is **confidential** and will not be shared with any other person without the express consent of the party supplying the information.

The mediator does **not** tell the parties what to do or offer legal or financial advice, only suggestions to be considered and used only if the people involved want to use them. Each party has the power in mediation to determine how they wish to handle their divorce and come to an agreement with the other party. The mediator or an attorney will write the agreement. Attorneys can be present during the mediation meetings for legal advice or either party may ask for a recess during mediation to talk with an attorney or any other party. Other parties, such as relatives or friends of the parties usually cannot be present in the mediation. If you need to discuss this in more detail, please E-mail or call me, Randy Edwards, at [LubbockMediator@aol.com](mailto:LubbockMediator@aol.com) or 806-535-1535.

**Facts to consider:** If your Divorce Decree, Paternity Decree or Final Order in the Suit Affecting the Parent-Child Relationship no longer works for your family, you can ask the court to change the orders in a **Suit to Modify the Parent-Child Relationship**. You may be able to change your child support order, but in a contested child support case, you will have to convince the court that: circumstances have materially and substantially changed, or if it has been at least 3 years since your last order and the monthly amount of child support differs from today's guidelines by either 20% or \$100. If you are the **person paying** child support (the Obligor), your new baby **is** a material and substantial change in circumstances. The court may consider a new child support order using child support guidelines for children in more than one household. If you are the **person receiving** child support (the Obligee) your new baby is **not** a material and substantial change that applies to your current child support order. Even if your new baby has the same father as your other children, your new baby is not part of your prior order. You'll need to file a Paternity suit or Suit Affecting the Parent-Child Relationship to get child support for your new baby.

The first item you need to consider is the **Letter or Phone Script**. This is a form you can use to send a letter to the other party about why you both might want to consider choosing mediation over the court battle. It can be copied into a word document, changed in any way you consider necessary and then sent to the other party. It can also be used as a script in a phone call or conversation with the other party. If you would like Professional Mediation Services to send the letter, please send the name and address of the other party along with a check or money order for \$25.00 made out to Randy Edwards, PO Box 98061, Lubbock, TX 79499 I will also send you a copy of the letter.

**Rules for Mediation** (2 Pages) are next. Please read them carefully because both parties will be asked to sign a copy of them stating they have read and understand them. This must be done before mediation can start.

**Mediation Information Sheet** (1 Page) One of these sheets must be filed out for each party and copies must be given to the mediator before mediation can start. Each party must bring proof of **income** and any **insurance coverage** for the children to the mediation. Also bring a copy of your **Divorce Decree and/or any temporary orders** if they have been issued.

**Rights of Parents at All Times** (4 pages) These pages outline parental rights and responsibilities, different types of conservatorship, sole managing or joint, standard possession, and child support. These are the standards required by Texas State law, but you are allowed to modify them to fit your particular situation **if** both parties agree. An online child support calculator is available on the left side of the [LubbockMediator.com](http://LubbockMediator.com) website (button in the blue area).

**Payment for Mediation Services** Payment is due at the end of each mediation session in cash, check, or money order unless other arrangements have been agreed to ahead of the session. The parties may agree to stop mediation at the end of a given time period if there is no progress toward reaching an agreement. If the mediator feels there is no progress or any way for the parties to reach an agreement the mediator will request to end the mediation and the parties may agree to do so.

Print out any or all of the following forms to use for your mediation.

## LETTER or PHONE SCRIPT

Your name  
Your Address

Other party  
Address  
Date

Other party;

I know that our children have to have the best possible care and love from both their parents. Even though our relationship did not work, our child(ren) (is) are going to be our child(ren) for the rest of our lives. I want our child(ren) to grow up happy and healthy and have a good relationship with both of his (her) (their) parents and I think you do too.

There have been some material changes that effect the terms of our decree and/or court orders and I believe there needs to be some changes made. We could do the usual thing and have two attorneys stand up in court to tell our stories to a judge and then the judge will tell us how to take care of our child(ren) A possible alternative that may work better with less stress, pain, and expense is mediation.

Mediation is a process in which an impartial person (Mediator) would help us to come to an understanding of the issues in our present situation and attempt to reach an agreement that is acceptable to both of us, that we both can live with in the future.

This mediation will allow us to develop an agreement for modification to settle any disputes we have to deal with in this situation. A mediated settlement agreement can save us time and expense and should result in a more satisfactory and workable resolution to this situation than can be obtained from a court unfamiliar with us and our child(ren).

Please, lets try to put aside our emotions and work together to find a way out of this situation and try to provide for our child(ren) so we can both move on with our lives and a happier future.

Please visit the mediation website: [www.LubbockMediator.com](http://www.LubbockMediator.com) and read about how the process works. Talk to Mr. Randy Edwards to find out how he can help us through this situation we are going to have to deal with in some way.

Please let me or Mr. Edwards know if you will try mediation.

Thank you,

Your name

## Rules for Mediations

Mediation is a process in which an impartial person helps the parties attempt to reach an agreement about the item(s) in dispute, come to an understanding of the issues(s) being discussed, or to accomplish reconciliation. The purpose of mediation is to assist the parties in developing their own final settlement or partial settlement concerning their disagreement.

Mediation is conducted according to the following rules:

### **1. Confidentiality**

Communications in mediation are confidential, and the mediator shall not disclose any communication made during mediation to the court or anyone else. However, abuse and neglect of children, the elderly, disabled persons, or murder are not confidential issues and must be reported. Certain federal matters may also require disclosure. ***WARNING: Any confidential communications between the attorney and their client in the presence of a third party (e.g. relative, friend, advisor) regarding any matter related to the subject of the mediation may not be protected as confidential if determined to be a waiver of the attorney-client privilege and may be discoverable and admissible in any subsequent legal proceedings.***

### **2. Participation and Disclosure**

Parties are expected to communicate openly and truthfully, to share all information pertinent to the issue(s), and to follow instructions as directed by the mediator. Parties agree to take turns speaking and agree not to interrupt each other. Parties agree not to argue about things that happened in the past, but instead focus on the future they would like to create. Common courtesy shall be exercised toward all in attendance at the mediation.

### **3. Legal/Financial Advice**

The mediator **cannot** provide legal or financial advice to either party. The mediator is neutral and will not advocate for either party. If the need for legal and/or financial advice arises during mediation, parties will be encouraged to discuss such issues with an attorney and/or a financial expert.

### **4. Participation of other Parties in Mediation**

In order to assist the parties in reaching an agreement, it may be necessary for the mediator to interview other persons. If so, the mediator will discuss and inform everyone involved. Such discussions are confidential unless otherwise agreed between the participating parties.

### **5. Session Attendance**

All Parties involved in the dispute are expected to attend each mediation session scheduled by mutual agreement of the parties. Parties are expected to mediate in good faith and to be prepared to discuss the issues in dispute. Parties in attendance certify they have the power to agree to any settlement reached by the mediation.

### **6. Individual Meetings (Caucus)**

At times, the process of mediation requires the mediator to hold individual meetings with the parties. Such information shared during these meetings is confidential unless approval is given by the appropriate person(s) to share such information with the other parties involved in the mediation.

**9. Other Concerns**

Any party may ask to speak to the mediator at any time without the other party present. Any party may ask for a reasonable break period for personal needs, to call another person for legal or financial advise, or if the session has become too intense. If any party feels the mediation is not working for them they may request to stop the session or decide not to continue the mediation at any time. Any party will inform the mediator if they feel the mediator is not being impartial. All parties agree not to proceed with adversarial legal proceedings (except in the case of an emergency) until the mediation is completed.

**8. Communications between Sessions/Notice of Settlement**

If mediation is continued to another date, the mediator will not discuss the mediation with either party or any attorney in the case between mediation sessions. If the parties settle their dispute before reconvening the mediation, the parties or their attorneys will immediately inform the mediator of settlement.

**9. Reporting Outcome of Mediation**

If the parties or mediator terminate the mediation before an agreement is reached, the Mediation Report will reflect an Impasse. If the parties reach an agreement during mediation that resolves all or part of their dispute, the mediator (or another person selected by mutual agreement of the parties) will complete a ***Mediation Agreement*** that will state the terms of the agreement. The completed ***Mediation Agreement*** will be given to the parties and their attorneys. Parties who attend mediation without counsel may sign the agreement at the mediation or may wait to sign the agreement until after their attorneys have reviewed and approved the agreement. Once signed, the ***Mediation Agreement*** may be enforceable as a binding contract. ***Before signing, and thereby executing, any agreement, parties have the right to have it independently reviewed by a lawyer.***

**By signing this agreement, we are acknowledging the following information:**

We agree to use our best efforts to participate fully in the mediation process in accordance with the above stated rules and move toward the fairest and most constructive agreement possible.

We further acknowledge that we have read and understood the Mediation Rules this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and that the Mediator has furnished us with a copy of these rules.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Attorney Signature)

\_\_\_\_\_  
(Print name)

\_\_\_\_\_  
(Attorney Print name)

\_\_\_\_\_  
(Signature)

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(Signature)

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(Attorney Signature)

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(Print name)

\_\_\_\_\_  
(Attorney print name)

**INFORMATION SHEET**

In the Matter of the \_\_\_\_\_ of \_\_\_\_\_ and \_\_\_\_\_

In the Interest of \_\_\_\_\_

I am the:  Petitioner  Respondent  Intervener  Other \_\_\_\_\_

NAME \_\_\_\_\_ DAY PHONE \_\_\_\_\_

ADDRESS \_\_\_\_\_ CELL/WORK PHONE \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

ATTORNEY \_\_\_\_\_ ATTENDING MEDIATION? Y\_\_ N\_\_

ATTORNEY ADDRESS/PHONE \_\_\_\_\_

Child(ren)	Sex	Birth date	Grade	Presently living with?

**Please answer the following questions:**

1. Has an Order of Restraint (Physical) been issued? Y\_\_ N\_\_

2. Has any form of violence been directed at you or the children such as hitting, shoving, destruction of property? Y\_\_ N\_\_

3. If yes, when has the violence occurred?  
 \_\_\_\_\_

4. If yes, has Children Protective Services been called? Y\_\_ N\_\_

5. Does the other party carry a weapon or a member of law enforcement? Y\_\_ N\_\_

**Topics in dispute in the Modification of Existing Orders:** (Circle all that apply)

Visitation

Support

Custody

Other (Please Explain) \_\_\_\_\_

## Rights of Parents at All Times

Unless limited by court order, at all times, mother and father shall have the following rights:

To receive information concerning the health, education, and welfare of the child(ren);

To confer with each other to the extent possible before making a decision concerning the health, education, and welfare of the child(ren);

Of access to medical, dental, psychological, and educational records of the child(ren);

To consult with a physician, dentist, or psychologist of the child(ren);

To consult with school officials concerning the child(ren)'s welfare and education status, including school activities;

To attend school activities;

To be designated on the child(ren)'s records as a person to be notified in case of an emergency.

To consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the child(ren); and

To manage the estate of the child(ren) to the extent the estate has been created by the parent or the parents' family.

## Rights and Duties During Possession

Unless limited by court order, during their respective periods of possession, mother and father shall have the following rights and duties:

The duty of care, control, protection, and reasonable discipline of the child(ren);

The duty to support the child(ren), including providing the child(ren) with clothing, food, shelter, and medical and dental care not involving an invasive procedure;

The right to consent for the child(ren) to medical and dental care not involving an invasive procedure; and

The right to direct the moral and religious training of the child(ren).

### **Texas Family Code Sec. 153.132.**

#### **RIGHTS AND DUTIES OF PARENT APPOINTED SOLE MANAGING CONSERVATOR**

Unless limited by court order, a parent appointed as sole managing conservator of a child has the rights and duties provided by Subchapter B and the following exclusive rights:

- (1) the right to designate the primary residence of the child;
- (2) the right to consent to medical, dental, and surgical treatment involving invasive procedures;
- (3) the right to consent to psychiatric and psychological treatment;
- (4) the right to receive and give receipt for periodic payments for the support of the child and to hold or disburse these funds for the benefit of the child;
- (5) the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;
- (6) the right to consent to marriage and to enlistment in the armed forces of the United States;
- (7) the right to make decisions concerning the child's education;
- (8) the right to the services and earnings of the child; and

(9) except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, the right to act as an agent of the child in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government.

## Specified Rights of Joint Managing Conservator

The following rights shall be exercised by each parent named as a Joint Managing Conservator independently, by joint agreement, or exclusively by one parent:

Specific Rights of Parents	Independent	Joint Agreement	Exclusive
Consent to medical, dental, and surgical treatment involving invasive procedures. Consent to psychiatric and psychological treatment of the child(ren).			
Consent to the child(ren)'s marriage.			
Consent to enlistment in the Armed Forces.			
Represent the child(ren) in legal action and to make other decisions of substantial legal significance concerning the child(ren).			
Inherit from and through the child(ren). Make decisions concerning the child(ren)'s education.			
Act as an agent in relation to the child(ren)'s estate.			

## Standard Possession Order Basics

The standard possession order (also called the parenting time order) sets out when the child gets to spend time with mom and dad. This order is authorized by Texas Family Code, Chapter 1S3, Subchapter F. It may be included in your Decree of Divorce, Paternity Decree or in an Order in a Suit affecting the Parent-Child Relationship. The order gives your child a regular schedule to look forward to seeing each of you. It includes holidays, weekends and weekly parenting time. Keep a copy handy for reference. If you do not have a copy of your order, contact the district court clerk in the county where your order was established or where your hearing was held. Please compare your parenting time order with the standard possession order and note all the dates on a calendar.

The order defines the person the child lives with primarily as the custodial parent (CP) or managing conservator and the non-custodial parent (NCP) or Possessory conservator as the person the child lives with the remainder of the time. The order says who is to pick up and drop off the kids. When the kids are with you, you have the right and responsibility to make the decisions for the child, unless your court order states otherwise. You are also responsible for the child's conduct and well being and for ensuring that your child is clothed, fed and sheltered. (**Note:** Child must be 3 years old or older for a Standard Possession Order)

**Mutual Agreement** – Most decrees have a statement that possession can be by mutual agreement. This means if both parties can agree on time, place, and how long each will have possession they can follow any visitation schedule they want to follow as long as it doesn't lead to constantly calling law enforcement and/or continuous court battles. If they can't agree, they must follow the possession order or they will be violating a court order.

Visitation is as follows:

**Weekday** - there are two options for the weekly parenting time. Please check your order to see if it is every Thursday (or Wednesday if your order was signed before September 1, 2005), beginning at 6:00 p.m. and ending at 8:00 p.m.; OR if it starts at the time the child's school is regularly dismissed; and ends at the time the child's school resumes on Friday morning.

**Weekends** start on a Friday. If Friday falls on the first of the month, that is the first weekend of the month. If Friday falls on the last day of the month, then the following Saturday and Sunday, or the first and second days of the month, are considered as part of the LAST weekend of the month. If your order is for the first, third and fifth weekends, this will be the fifth weekend.

**Spring Break** - Children spend spring break with the custodial parents in odd numbered years under the standard parenting time order. The non-custodial parent has the child for spring break in 2010.

**Holidays** - The Christmas holiday season is divided into two parts. The first part is from the day school is dismissed until noon on December 26 (or December 28 if your order was signed after June 15, 2007) and the second part is from noon on December 26 (or December 28 if your order was signed after June 15, 2007) until school resumes after the Christmas vacation. One year the CP will have the child for the first half of the holiday period and the next year they will have the child for the second half of the holiday period. The non-custodial parent with parenting time rights will have possession of the child for the other half of the Christmas vacation.

The Thanksgiving holiday season is divided by odd and even years. One parent is entitled to possession for this vacation period in odd-numbered years and the other parent is entitled to possession in even-numbered years.

If the mother is not in possession of the child on **Mother's Day**, she is entitled to pick up the child for a period of parenting time over Mother's Day.

If the father is not in possession of the child on **Father's Day**, he is entitled to pick up the child for a period of parenting time over Father's Day.

**Child's Birthday** - The parent not in possession of the child on the child's birthday is entitled to pick up the child for two hours between 6 p.m. and 8 p.m.

**Summer** - If the parents live within 100 miles of each other, the non-custodial parent is entitled to 30 days of possession during the summer months. If the parents live more than 100 miles apart, the non-custodial parent is entitled to 42 days of possession during the summer months. The primary custodial parent will have some parenting time rights during these periods.

Dates to remember:

**April 1, 20xx** - Non-custodial parents have to give written notice to the custodial parent if they want to specify the period of summer possession. If written notice is not given, the NCP shall have possession from 6 p.m. July 1 through 6 p.m. July 31.

**April 15, 20xx** - Custodial parents must give written notice to the non-custodial parent the weekend they wish to have the child during the non-custodial parent's summer time possession.

For more information or for clarification about parents' rights and responsibilities, either go online to [www.txaccess.org](http://www.txaccess.org) and locate the **Visitation Rights and Responsibilities** article or call the toll-free **Access/Visitation Hotline at (866) 292-4636** Monday through Friday, 1 -7 p.m., to discuss your order with an attorney familiar with family law.

## Child Support

Child support payments are normally based on the net resources of the non-custodial parent after deductions for Social Security, taxes, and union dues. If there is a large disparity between the resources of the parents, if the custodial parent is receiving child support from another person, if either parent or any child(ren) is(are) disabled, if either parent is receiving Social Security benefits; any of these conditions could effect the support calculation. It is recommended parties consult with an attorney familiar with child support calculations.

### MULTIPLE FAMILY ADJUSTED GUIDELINES (% OF NET RESOURCES)

		Number of children before the court						
		1	2	3	4	5	6	7
Number of	0	20.00	25.00	30.00	35.00	40.00	40.00	40.00
other	1	17.50	22.50	27.38	32.20	37.33	37.71	38.00
children for	2	16.00	20.63	25.20	30.33	35.43	36.00	36.44
whom the	3	14.75	19.00	24.00	29.00	34.00	34.67	35.20
obligor	4	13.60	18.33	23.14	28.00	32.89	33.60	34.18
has a	5	13.33	17.86	22.50	27.22	32.00	32.73	33.33
duty of	6	13.14	17.50	22.00	26.60	31.27	32.00	32.62
support	7	13.00	17.22	21.60	26.09	30.67	31.38	32.00

On line Child Support Calculator:

<http://www.texaslawhelp.org/documents/294101final.pdf?stateabbrev=/tx/>

Health insurance for the children is required to be provided by one of the parents with deductibles and co-pays normally to be divided equality between the parents.