

Discussion Topics for Mediation

While each mediation is different, most mediations for divorce or parenting arrangements will involve some or all of these twelve issues.

1. **Primary Residential Responsibility for the children.**

Some children will reside primarily with one parent. Some children will reside primarily with the other parent. Some children will reside equally with each parent. The parent with the larger number of overnights with the children is typically considered the parent with primary residential responsibility. How the overnights or time with the children will be split is a frequent topic for mediation. Other issues that may be discussed under this topic may include which parent's home will be considered the residence of the children for school attendance.

2. **Parenting Plan.** There are countless variations of a parenting plan that might be available to serve the needs of children in particular situations. Most parenting plans include parenting time for the parent without primary residential responsibility of at least every other weekend, some of the holidays and perhaps more extended time in the summer. Many times we look at parenting time in two week blocks or more. For instance, a schedule which has parenting time for one parent of just every other weekend (such as Friday after school or work until 6 p.m. on Sunday) has one parent typically getting two nights out of every fourteen. If the parent gets more nights than just alternating weekends, they may get four night out of 14 or six nights out of 14.

If the parties agree on **joint primary residential responsibility**, or equal time to each parent, the parties will consider how long the blocks of time will be with each parent. Common parenting schedule options include the following three examples:

- a. Each parent has a week at a time, with the exchange to occur on Sunday night. (The advantage to this plan is that it is easy to figure out and there are fewer exchanges. The disadvantages is that the parties go a week without seeing their children.)
- b. Parent A always has overnights on Monday and Tuesday, Parent B has overnights on Wednesday and Thursday, and the parties rotate a three day weekend from Friday until Monday morning. (The advantage to this plan is that no parent goes more than five days without seeing their children. Most of the weekdays are the same from week to week. The disadvantage is the numerous transitions and that five days may be too long for some parents).

- c. Parent A has Monday and Tuesday overnights in week 1. Parent B has Wednesday and Thursday overnights in week 1. Parent A has the weekend starting in week 1 from Thursday to Monday morning. The next week the schedule is reversed. Parent B has Monday and Tuesday overnights, Parent A has Wednesday and Thursday overnights and Parent B has the weekend until Monday morning. (The advantage here is that a parent does not go more than three days before seeing their child. The disadvantage is that the plan can seem confusing for children and the exchanges are numerous.)

At times parenting time may be supervised, or be for short blocks such as when there is an addiction issue, a domestic violence issue or when a parent has previously had little involvement with the child. At times a “transition plan” is implemented, with gradually increasing periods of parenting time and gradually reduced supervision.

Holidays. Holidays are frequently alternated. Below is a sample of a rotating holiday schedule.

- i. Holidays shall take priority to the regular parenting time schedule, and shall be alternated as follows:

Holiday	Even Years	Odd Years
Easter weekend from 5:00 p.m Friday until 5:00 p.m. on Sunday.	Father	Mother
Mother’s Day	Mother	Mother
Memorial Day weekend from 5:00 p.m. Friday through the following Monday at 5:00 p.m. .	Mother	Father
Father’s Day	Father	Father
Fourth of July to include a three day period overlapping July 4 th	Mother	Father
Labor Day Weekend from 5:00 p.m. Friday until 5:00 p.m. on Monday.	Father	Mother
Thanksgiving from 5:00 p.m. on Wednesday to 5:00 p.m. on Sunday	Mother	Father
Christmas Eve Day until 10 a.m. on Christmas Day.	Father	Mother
Christmas Day from 10 a.m. until 9:00 p.m.	Mother	Father

Summer. Often times a parent may get more time in the summer, or each parent may designate a week or two of uninterrupted parenting time with reasonable notice to the other parent.

3. Legal decision making.

In most cases the parties agree on joint legal decision making, then come up with their own definition of what legal decision making is going to entail in their case. The following is an example of a joint legal decision making plan for children.

Parental Duties/Parenting Responsibility. The parties shall each have the following parenting rights, duties, and responsibilities relating to the minor children of the parties:

- a. *Emergency medical decisions.* Each parent is authorized to make emergency health care decisions while the children are in that parent's care.
- b. *Day-to-day decisions.* Each parent is authorized to make decisions regarding the day-to-day care and control of the children while the children reside with that parent.
- c. *Joint decisions.* The parents shall jointly make decisions regarding the children's education, non-emergency health care, and religion. (Sometimes for joint decisions we see a "tiebreaker parent" who can decide the issue after consultation between the parents if there is still disagreement.)
- d. *Duties and responsibilities.* The parties shall share the following duties and responsibilities of the minor children:
 - i. Right to access and obtain copies of the children's educational, medical, dental, religious, insurance, and other records or information;
 - ii. Right to attend educational conferences concerning the children. This right does not require any school to hold a separate conference with each parent;
 - iii. Right to attend medical appointments concerning the children.
 - iv. Right to reasonable access to the children by written, telephonic, and electronic means;

- v. Duty to inform the other parent as soon as soon as reasonably possible of a serious accident or serious illness for which any child receives health care treatment. The parent shall provide to the other parent a description of the serious accident or serious illness, the time of the serious accident or serious illness, and the name and location of the treating health care provider.
- vi. Duty to immediately inform the other parent of a change in residential telephone number, address, and the name and relationship to them of any person with whom the parent and children permanently reside.
- vii. Duty to keep the other parent informed of the name and address of the school the children attend.
- viii. Duty to inform the other parent of significant achievements by the children.
- ix. Duty to inform the other parent of legal or significant behavioral problems.
- x. Each party shall use their best efforts to foster a healthy, active, and loving relationship between their children and the other, and shall do no act and say no word intended or designed to minimize their children's affection for the other.
- xi. *Neither Parent to Request Decision by Children.* Neither parent shall ask the children to make decisions or requests involving the parenting schedule.
- xii. *Tattoos, piercings, marriage, military.* Tattoos and piercings of the minor children shall require the consent of both parents. Enrollment in the military or marriage of a minor child shall take the consent of both parents.

4. **Child support.** The parties should come to mediation with information on their recent incomes from check stubs and recent tax returns, and preferably a child support calculation done in advance of the mediation. They should know how much it costs to add their children to their health insurance policy. This information is used to have a discussion about potential child support ramifications. If one parent receives primary residential responsibility, the determination is made predominantly from the other parent's income information. If the parties share residential responsibility, typically both parties' incomes are relevant. Many times, if joint primary residential responsibility is agreed to, child support calculations are done for each parent and the two numbers can be offset, depending on the government services each party is entitled to.
5. **Health insurance.** The parties typically agree on which party will have the primary obligation to cover the children for health insurance. Often this is the party who has the best and most inexpensive coverage available to them, such as through their employment.
6. **Unreimbursed medical expense.**

In North Dakota, a common approach is for the parties to equally split unreimbursed medical expenses for the children, and to come up with a method for how and when those expenses are to be paid. A common statement is below.

Uninsured medical, dental, orthodontic, vision, counseling and other expenses of the minor child will be shared equally between the parties. Within 30 days of paying a deductible, co-insurance or non-covered amount, the billed party will send the information to the other party and they will have an additional 30 days to reimburse the 50% of the payment.

In Minnesota, a common approach is for the parties to contribute to health care costs in proportion to their relative incomes.

7. **Tax Exemptions, Deductions and Credits for minor children.**

The parties often have a discussion about how to share any relevant tax advantages from claiming the children. A common approach is to share the children's tax credits for filing income tax returns, and to alternate claiming the larger number of children when there is an odd number of children to claim.

8. Transportation for parenting time exchanges.

The parties often discuss how to share in the transportation obligation for parenting time exchanges. Sometimes parents agree to “meet in the middle” for parenting exchanges, particularly where they have to drive a great distance. Another common option is to share in transportation by having the transportation always being done by the parent beginning their parenting time. (The advantage in this option is that if a parent is late or can’t make it due to weather, etc., the other parent gets the extra time.)

9. **Dispute Resolution.** The parties often would prefer to return to mediation if there is an issue with regard to the children in the future, rather than face a motion in the court. Often times the parents build in a requirement for mediation prior to a motion, unless the issue constitutes an emergency or is just an enforcement of an existing order. The parties often agree that they will share any costs of a mediator and jointly agree on a mediator, or set up a process for selecting one.

10. Right of first refusal.

A right of first refusal can be inserted in the agreement to require that when one party is unable to use their parenting time, they have to offer it to the other parent prior to making arrangements for third party care. For instance, the parties may have a requirement that they have to offer the time to the other parent for periods of an overnight or more.

11. Ground rules.

Parents often discuss ground-rules for parenting time, on issues such as smoking, drinking, drug use, introductions to new significant others or related issues. Examples might be:

- a. Neither parent will smoke in the home or car where the children will be, or allow others to do so.
- b. Neither parent will drink alcohol during parenting time, or twelve hours before. (Or neither parent will “drink to excess” during parenting time or twelve hours before).
- c. Neither party will transport the children in a vehicle after having consumed alcohol or allow others to do so.
- d. Neither parent will use illegal drugs during parenting time, or abuse prescription drugs.
- e. Neither parent will introduce the children to a new significant other until they have advised the other parent of their intention to do so. (or until after the relationship has matured).

12. Moves.

In many circumstances, the parent who has primary residential responsibility cannot move outside the state of North Dakota unless they have the permission of the other parent or an order of the Court that the move is in the child's best interest. Sometimes we further restrict that rule by agreement to provide assurance to the other parent that the children will not be moved a great distance even within North Dakota without further discussion. An example would be to say that the party with primary residential responsibility will not move the children more than 30 miles from Grand Forks without the permission of the other parent or an order of the court.