

# A Guide To

# PROBATE MEDIATION



## ❖ What is Mediation?

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Mediation is a process in which a neutral third party assists communication between interested persons. In addition, the mediator will assist in identifying issues, and help explore solutions to find a settlement that all parties are satisfied with. Furthermore, a mediator is not a judge. The interested persons voluntarily enter into a settlement.

## ❖ Why Should I try Mediation?

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In the traditional court process, the judge rules on the outcome of the case. Mediation allows the interested persons involved to determine a solution that will provide an agreement that is satisfactory to everyone. Mediation can be scheduled quickly and can be less expensive than a court case handled by a judge. Moreover, mediation is less damaging to long-term and ongoing relationships than a court case with a judge. The mediation process is confidential, unlike court proceedings, which are public. Also, interested persons using mediation do not give up any of their legal rights and can always choose to continue with a regular trial.

## ❖ How do I get Involved in Mediation and How is it Scheduled?

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A case can be ordered into mediation or the interested persons can voluntarily submit their case at any time. If the judge orders the case to mediation, the interested persons have 14 days from the day the order is entered to agree on a mediator and 60 days to complete mediation. If an interested person needs more than sixty days, they can contact the judge to request an extension. The mediator will

contact interested persons to schedule mediation in accordance with the court. Also, the mediator will review the need for limited discovery, the number of interested persons and issues involved, and the need for multiple mediation sessions in scheduling mediation. In addition, the mediator may require that the parties submit documents or summaries providing information about the case.

### ❖ **Is a fee involved in Mediation?**

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Yes, the mediator sets an hourly fee. Payment arrangements are made between the interested persons and the mediator. If an interested person cannot afford a mediator, they may petition the court for appointment of a mediator at no cost to the petitioner, and if the judge finds that the interested person is unable to pay, a mediator will be appointed for free or at a low cost.

### ❖ **How do I select a Mediator?**

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Interested persons are encouraged to agree to the selection of their own mediator. The court maintains a list of approved mediators to help in the selection process however, ***interested persons are free to choose whomever they agree on to mediate their case.*** If the interested persons do not agree on the selection of a mediator in the time given by the court, the court will appoint a mediator using the Blind Draw method from the Oakland County approved Probate Mediator List.

### ❖ **Where is Mediation held?**

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The interested persons and the mediator choose the meeting place, as well as the dates and times of the meeting.

### ❖ **What Happens During Mediation?**

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The mediator will explain the mediation process, discuss any facts and issues involved with the interested persons, and establish some ground rules. A mediation session will continue until (a) a settlement is reached; (b) the mediator determines that a settlement is not likely to be reached; (c) the end of the first mediation session; (d) until a time agreed on by the interested persons.

### ❖ **What Happens at the End of Mediation?**

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Within 14 days after mediation, the mediator will submit a Mediation Status Report to the court. If the matter is settled through mediation, the attorneys will prepare and submit the proper paperwork to end the case within 21 days of the settlement. However, if the matter could not be settled, the interested persons will follow the court dates set by the scheduling order or subsequent orders.

### ❖ **What are the Qualifications to Serve as an Approved Mediator?**

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Approved mediators must complete an extensive training program approved by the State Court Administrator, as well as observe and conduct mediation sessions. In addition, mediators have to fulfill a continuing education requirement (see below) to remain on the court's list of approved mediators.

❖ **Do Mediators have a continuing Education Requirement?**

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Yes, approved mediators are required to obtain 8 hours of advanced Mediation training during each 2-year period.

❖ **Are there Standards of Conduct for Mediators?**

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Yes, mediators are to promote honesty, integrity, and impartiality, which are all focused on during the education and training process that each mediator goes through. A mediator may be disqualified for the same reasons a judge may be disqualified; including, demonstrating incompetence, bias, consistently being unavailable to serve as a mediator, or for other justifiable reasons.

❖ **What If I Have Additional Questions?**

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Mediation Staff are happy to help. Call the Case Management Office.

**Phone: (248) 975-9844**

**Website:**

[https://www.oakgov.com/courts/circuit/Pages/division\\_committee/mediation.aspx](https://www.oakgov.com/courts/circuit/Pages/division_committee/mediation.aspx)

**“Let us not negotiate out of fear, but let us never fear to negotiate.”**

John F. Kennedy (1961)

**Give Mediation A Try!**

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