

# IS MEDIATION RIGHT FOR YOU?

By Cari Rincker, Esq. of Rincker Law, PLLC

*Mediation can oftentimes be confused with arbitration or seeking legal advice. Here are some brief differences among the options:*

	<b>Attorney</b>	<b>Mediator</b>	<b>Arbitrator</b>
Legal Advice	Attorneys can give you specific legal advice tailored for your situation.	Mediator cannot give legal advice. Participants should have their own consulting attorney.	Arbitrators are like judges and do not give legal advice.
Drafting Papers	Attorneys can draft and submit papers for court.	Mediators who are attorneys can draft papers, such as a settlement agreement or parenting plan. Parties are encouraged to review the papers with a consulting lawyer before signing. Alternatively, the mediator can draft a Memorandum of Understanding.	Arbitrators will only draft decisions much like a judge.
Appearances in Court	Attorneys can appear in court on your behalf.	Unless waivers are signed and there is permission from the court, mediators will not appear in court. Mediators should not be subpoenaed to testify.	An arbitration is an informal court proceeding where evidence is presented and testimony may be taken. Arbitrators do not appear in court.
Negotiation	Attorneys can negotiate with the opposing party or counsel. Attorneys can attend mediation sessions and arbitration sessions.	The mediator helps facilitate negotiation.	The arbitrator is not negotiation a settlement; instead, he or she
Legal Issues		Everything except for Orders of Protection/ domestic violence.	Economic issues only (not allocation of parental responsibilities)
Confidentiality / Attorney-Client Privilege	Confidentiality and Attorney-Client Privilege apply	Confidential / no Attorney-Client Privilege (mediator is not giving legal advice)	No attorney-client privilege; look at arbitration rules re: confidentiality

## PRELIMINARY QUESTIONS FOR MEDIATION ELIGIBILITY

Before booking a mediation session with Rincker Law, PLLC, we will have you sign a mediation agreement. In that agreement, we ask several questions to ensure eligibility for mediation with us.

*Here are the questions in the agreement:*

Prerequisite	You	Other Party
I am able to make decisions regarding mediation and this Matter freely.		
I can be truthful during the mediation process and provide full disclosure without being afraid or endangered.		
Even though this is a court-ordered mediation, I am aware that mediation is a voluntary process. I can withdraw from mediation at any time, even during a mediation session, without retribution from the other party.		
I understand that I have legal rights but I also understand that the other party has legal rights that may be different than my own.		
I understand that any mediated agreement or resulting MOU or settlement agreement must be agreed to voluntarily.		
I am not cognitively or emotionally impaired ( <i>e.g.</i> , suffering from severe depression) in any way that affects my ability to mediate.		
I do not lack capacity to make meaningful decisions because of drug or alcohol abuse.		
There is not an Emergency, Interim or plenary Order of Protection between myself and the other party.		
There is not any physical abuse between myself and the other party.		

*If the answer to any of these questions are "NO" then please set-up a time to speak to Cari Rincker directly to ascertain edibility and appropriateness of mediation. She can be reached at [cari@rinckerlaw.com](mailto:cari@rinckerlaw.com).*