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Mediating Child Support: A Resource for Attorneys and Mediators



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Mediation is an alternative dispute resolution (ADR) process where a trained mediator helps parties talk about their dispute in a confidential setting. Mediators do not advocate for either party, make decisions, or force parties to agree to a particular solution.

In mediation, the entire session is focused on the participants and their family. The mediator takes as much time as needed to help parties talk about what is important to them. Only certain things, such as allegations of child abuse, are not confidential.

The mediator asks parties to take an active role in creating the support agreement that will affect their family. In court-referred

mediation, the mediator memorializes the parties' decisions in an agreement. Upon court approval, the parties' agreement becomes part of the court order.

Why mediate child support?

1. Mediation's main goals are:
 - to help parties talk about the care of their family; and
 - to help parties develop an enforceable child support order.
2. The mediator can help parties talk about their child's financial needs and decide the best way to meet them while keeping in mind everyone's financial needs.
3. In court or at the Division of Child Support Enforcement (DCSE), the courts or DCSE decides how much the parties should receive or pay in child support. In mediation, the parties agree to a monthly amount of child support using Virginia's child support guidelines (the guidelines) as a starting point. Upon court approval, the parties' agreement will become part of the court order.

Most courts have mediation programs that provide free mediation to parties who have custody, visitation, or child support cases. In those courts, cases are referred to a mediator who is paid by the state.

In court-referred mediation, mediators are legally required to hold an orientation session before mediation. Depending on the court's mediation program, a party may attend this session with a group of people involved in different cases, or just with the other parties to the dispute.

During the orientation session, the mediator will explain mediation to the parties and will determine whether mediation is appropriate for the case. If all parties want to mediate and it is right for the case, the parties will have the option to mediate. The orientation session is required, but mediation is voluntary. Parties do not have to mediate and can stop mediation at any time. Mediation may take a couple of hours. Parties are asked to set aside enough time for their mediation session so they do not feel rushed.

Before Mediation

Before parties can mediate any child support issues, paternity must be established. Paternity is legal fatherhood. Here are some ways paternity can be established:

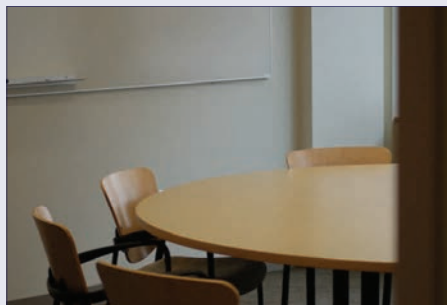
1. parents were married on the child's birth date;
2. acknowledgement of paternity by the father under oath in court;
3. genetic testing, which can be ordered by the court; or
4. court order showing an adoption.



Mediation Checklist

Mediators need the following information from parents to calculate child support:

- Proof of gross income (at least three most recent pay stubs or Leave and Earnings Statements (LES), most current W2 or 1099 tax form, or most recent tax return);
- Child's Social Security Number;
- Driver's license number for each parent;
- Address and telephone number of each parent's employer;
- Information about professional or recreational licenses, certificates, or registrations for each parent;
- Child's health and dental insurance cards, if available;
- Health care coverage cost for the child paid by the parent or parent's spouse;
- The cost of child-care and name of child-care provider;
- If a party is ordered to pay support for any other children, a copy of the support order;
- Actual support paid for other adults (e.g., a disabled parent or grandparent);
- A detail of any qualified business expenses, such as self-employment tax; and
- A copy of any custody, or visitation orders for the child being discussed in mediation.



During Mediation

The mediator will start with an introduction and will review an *Agreement* or *Consent to Mediate* form that all participants sign. The mediator will ask for the information needed to calculate support. The mediator should calculate the statutory child support amount before parties discuss payments. Virginia law establishes a presumptive amount of monthly child support through its guidelines calculation. In mediation, the parties may agree to deviate from the guidelines, based on their family's needs. Deviations must be explained in the written agreement. Some courts put limits on how much parties can deviate.

The child support guideline calculation used depends on custody and visitation arrangements. The mediator will need to know who has physical custody and how many days the child spends with each parent. The mediator will need to know the custody and visitation arrangements under the current order. If there is not a current order for custody or visitation in place, the mediator will need to know with whom the child lives and how many days the child spends with each parent.

Virginia law creates the following three definitions for use in child support determinations; these definitions are not used in custody/visitation proceedings:

Sole custody: The child lives or visits with the non-custodial parent 90 days or fewer per year, as defined by law.

Shared custody: The child lives or visits with the non-custodial parent for more than 90 days per year, as defined by law.

Split custody: One parent has physical custody of one or more of the parties' children and the other parent has physical custody of the other children (parents must have at least two children together).



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Once the custody arrangement is determined and the appropriate worksheet is selected, the mediator will calculate support using the information provided. If parties bring all the information in the checklist on the previous page, they should be prepared for mediation. When parties come prepared, they are more likely to resolve their issues. The specific information needed is described on the following pages.

Gross Income

Gross income is income from all sources, including unemployment benefits or workers' compensation. The only income not used is: wages from a job obtained to pay child support arrearages; welfare payments or benefits; child support received; and certain types of social security payments. Only the child's biological or adoptive parents' income is used. For example, if Aunt Ellen has custody of Sarah, Aunt Ellen's income is not considered in calculating support.



Imputation of Income

If a parent is presently unemployed or underemployed, his or her income may be imputed. This means that he or she can be assigned income. In mediation, the parties can decide to impute income and how much to impute. Individual courts may have different policies regarding mediated imputation. Mediators should tell parties about individual court policies.

Deductions from Income

Virginia law allows certain deductions to be taken from gross monthly income in determining statutory child support. Those deductions are: spousal support paid, support paid for other children, and certain business expenses, such as self-employment tax.

Spousal Support Payments

When calculating child support, if a parent pays spousal support to the other parent or someone else pursuant to an order or a written agreement, his or her payments are subtracted from that parent's gross monthly income. If a parent receives spousal support from the other parent or someone else pursuant to an order or a written agreement, the amount he or she receives is added to that parent's gross monthly income. If there are spousal support payments exchanged between parties that are not a result of a court order or written agreement, parties may take these payments into consideration and deviate from the guidelines. Individual courts may have different policies regarding mediated deviations.



Support for Other Children

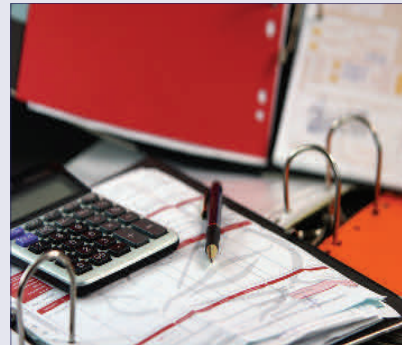
Child support previously ordered by the court or DCSE for other children may be deducted from gross monthly income. If there is not a child support order in place for other children, but a parent has other biological or adopted children living with him or her, the amount the statutory Schedule of Monthly Basic Child Support Obligations (the Schedule) states it costs to support those other children monthly may be deducted from gross monthly income. For example, assume Mom makes \$2,000 per month and has two other biological children living in her house. Based on her monthly income and the number of other children, the Schedule says it costs \$523 to support the other children. This \$523 would be subtracted from Mom's gross monthly income.

Self-Employment Tax

If a parent is self-employed and can show how much was paid in self-employment tax, he or she can deduct from gross income one-half of the self-employment tax actually paid.

Work-Related Child-Care Expense

Work-related child-care expense is the cost of child-care paid so the custodial parent can work. Child-care costs should not exceed the amount required to provide quality care from a licensed source. Also, when deciding child-care cost or need, the non-custodial parent's ability and desire to take care of the child while the other parent is at work is considered.



Monthly Available Income

Monthly available income is the income after all allowable deductions or additions have been made. The mediator adds both parents' monthly available incomes together to get the combined monthly available income, which is used with the Schedule to determine monthly basic child support. Monthly basic child support is the amount Virginia law states it costs per month to raise a child based on the parents' combined monthly income. To get the total monthly child support amount owed, work-related child-care expenses and health/dental insurance costs are added to the basic child support.

Health Care Coverage Cost

Cost for health care coverage is the cost per person for the child that is being paid by a parent or parent's spouse. If the per child cost is provided by the insurer, that is the cost per person. Otherwise, to determine the cost per person, the cost of individual coverage for the policy holder is subtracted from the total cost of the coverage, and the remaining amount is divided by the number of remaining covered persons. The child's cost per person is the health care coverage cost used for child support calculations.



Total Monthly Child Support

The mediator will calculate each parent's share of the total monthly child support. A parent's share is a percentage based on how much he or she contributes to the monthly combined income. For example, assume the combined monthly income is \$2,000. Mom earns \$800, which is 40%, and Dad earns \$1,200, which is 60%. Mom would be responsible for 40% of the total monthly child support, and Dad would be responsible for 60%. If Mom is the primary physical custodian in a sole custody arrangement, Dad would pay Mom 60% of the total monthly child support. If Dad is the primary physical custodian in a sole custody arrangement, Mom would pay Dad 40% of the total monthly support. The worksheet will determine who will be the payor and who will be the payee.

Once the support calculations are completed, parties will be able to discuss whether they want to follow the guidelines, or whether they want to deviate. In court-referred mediations, parties' decisions will be memorialized in an agreement and submitted to the court. Upon court approval, the agreement will become part of the order for child support. There is a certain amount of flexibility in mediated agreements; however, certain topics must be covered or at least discussed (please see Mediated Agreement Content Checklist on the next page).

After Mediation

In court-referred mediation, the mediated agreement along with the child support guideline calculations are sent to the referring court for approval. It is important to make sure all the topics listed above are addressed and the agreement is written in a way that is enforceable.



Mediated Agreement Content Checklist

The agreement must contain:

- Name, birth date, and last four digits of the Social Security Numbers of the parents and child
- Each parent's residential and, if different, mailing address and telephone number
- Each parent's driver's license number
- Name, address and telephone of each parent's employer
- Information on any professional, occupational, or recreational licenses
- The name of the person paying child support
- The name of the person receiving child support
- The amount of child support
 - Parties can deviate from the guideline amount as long as they explain why.
 - Individual courts may have different policies regarding mediated deviations.
 - Mediators should communicate court policies to parties.
- When the agreement becomes effective
 - For initial petitions, the effective date is usually the date the petition is filed in court.
 - For motions to amend, the effective date may be as early as the date the respondent was served.
 - Sometimes in mediation, parents can decide the effective date.
- When child support is due every month
 - The law requires that payments be due on the first of the month. Parties can agree that payments be made on each of the payor's paydays (for example, the 1st and 15th of each month or every other week).
- How support is paid
 - The court may enter an Income Withholding Order, which requires the payor's employer to deduct support payments from his or her paycheck and send them to the Treasurer of Virginia. The Treasurer sends the funds to the payee. It is against Virginia law for an employer to fire an employee for receiving an income withholding order. An employer can charge \$5 per pay period for processing an income withholding order.
 - Electronic funds transfer by the payor from bank or work, such as a military allotment
 - Direct payment to the Treasurer of Virginia by the payor (a case will need to be opened with DCSE)
 - Direct payments from payor to payee. In this method, it is important that the parties maintain a record of payments to avoid future conflict about whether payments were made.
- Health insurance coverage, including policy information, or a written statement that coverage is not available at a reasonable cost through an employer
- Division of medical costs not covered by insurance per child per calendar year
- Child support arrearages and method of payment
 - Arrearages can result or otherwise be affected when the effective date is set several months prior to the mediation session.
- Duration of child support
 - Under Virginia law, child support continues until the child turns 18 unless the child is a full-time high school student who is not self-supporting, and is living in the home of the parent seeking or receiving support. In this case, support continues until the child reaches the age of 19 or graduates from high school, whichever occurs first.
 - A judge can extend or order child support for any child over 18 if the child is severely and permanently disabled before the age of 18 or 19 if the child was a full-time high school student, is unable to live independently, and lives with the parent seeking or receiving child support.





Resources

- DCSE: www.dss.virginia.gov/family/dcse.html
- Virginia's Judicial System: www.courts.state.va.us
- Mediation Section of Virginia's Judicial System: www.courts.state.va.us/courtadmin/aoc/djs/programs/drs/mediation/home.html
- Virginia State Bar - Virginia Lawyer Referral Service: www.vsb.org/vlrs/index.php/public/vlrs/
- Family Law Section of Virginia State Bar: www.vsb.org/site/sections/family
- Virginia Code Sections [20-108.2](#) and [20-60.3](#)

