

Family Notice to Mediate Pilot Project

Fact Sheet for Lawyers and Mediators

The Ministry of Attorney General has introduced a family mediation pilot project in Duncan, Nanaimo, New Westminster, Vancouver and Victoria to help people find early solutions to their family law disputes. The Notice to Mediate (Family) Regulation enables any party to a family proceeding in one of these B.C. Supreme Court registries to require the other parties to attend a single mediation session. For additional information about the notice to mediate process, you may wish to see the information bulletin "Notice to Mediate (Family) Regulation" under Research and Publications on the Dispute Resolution Office website: www.ag.gov.bc.ca/dro/. A copy of the Regulation is available under the What's New section of the same website.

Information for Lawyers

As counsel for a party to a family law proceeding in one of the pilot site registries of the B.C. Supreme Court, your case may be appropriate for the notice to mediate (family) process. This process enables any party to a family law proceeding to compel all other parties to mediate the matters in dispute. If you are considering the notice to mediate (family) process for your client, the case will typically involve the following steps:

Determine if the notice to mediate (family) is appropriate for your client

If there are concerns about safety for one or all of the parties or the safety of their children, then mediation may not be an option. A history or pattern of violence and power imbalances are some of the factors that mediators take into consideration when determining if mediation is appropriate. For additional information about preparing for mediation as counsel, you may wish to speak with a family mediator or see "Preparing for Mediation as Legal Counsel" under Research and Publications on the Dispute Resolution Office website: www.ag.gov.bc.ca/dro

Initiate the notice to mediate (family) process

The notice to mediate (family) process is initiated by delivery of a notice to mediate (Form 1 in the Regulation) to every other party. A copy of the notice must also be sent to the Dispute Resolution Office, Ministry of Attorney General (address below).

Select a mediator

Parties must jointly agree upon a mediator within 14 days after the notice has been delivered to all other parties. Mediators' training, experience and mediation styles differ. These are all important considerations in selecting a mediator who is appropriate for your client's case. It is also important that you ask about the standards of conduct to which the mediator subscribes. The BC Mediator Roster Society maintains a roster of family mediators who have met training and experience criteria and who subscribe to the society's standards of conduct. For a list of family mediators, go to Directory of Mediators on the website of the BC Mediator Roster Society: www.mediator-roster.bc.ca/

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Information for Mediators

As a mediator, you may be requested by counsel or by parties to provide mediation services under the Notice to Mediate (Family) Regulation. If you are, then the following information may assist you.

Determining if your clients fall under the Notice to Mediate (Family) Regulation

The regulation enables any party to a family law proceeding in designated registries of the Supreme Court to compel all other parties to mediate the matters in dispute. The notice can be used at any time between 90 days after the filing of the first statement of defence and 90 days before the date of trial, unless the court orders that it can be used before or after this timeframe.

Specific requirements under the Notice to Mediate (Family) Regulation

The Notice to Mediate (Family) Regulation requires:

- that mediators hold a separate pre-mediation meeting with each party during which they must screen for power imbalance, domestic violence and abuse. In these pre-mediation meetings, the mediators must also discuss with the parties the importance of independent legal advice. Following a pre-mediation meeting, a mediator may end the mediation process if they conclude that mediation would not be appropriate or that the mediation process will not be productive. Information about tools for screening is available under About Mediation on the website of the BC Mediator Roster Society at: www.mediator-roster.bc.ca/
- that mediators may authorize a person to attend a pre-mediation meeting or a mediation session by telephone or other communications medium;

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Information for Lawyers (continued)

If the parties cannot agree on the selection of a mediator, any party may apply to the BC Mediator Roster Society for appointment of a mediator. The request for appointment should be in writing to the society (address below) and may be sent by fax. The request should contain the following information:

- that the parties have not been able to agree on a mediator in the time required by the regulation;
- that the request for appointment is being made under section 7 of the Notice to Mediate (Family) Regulation;
- it should list the names and contact information for counsel involved in the action, as well as the names of the parties which they represent or the names and contact information for unrepresented parties; and
- a copy of the notice to mediate should be included with the request for appointment.

The process that the society will follow in appointing a mediator is set out in sections 8 to 11 of the Regulation.

Prepare your client

The mediation session must occur within 60 days after the mediator's appointment, but not later than 14 days before the date of trial, unless a later specified date is agreed to by parties or is ordered by the court. Ensure that your client:

- is prepared to make an opening statement;
- has authority to settle the dispute;
- knows what to expect; and
- knows the costs, risks and benefits of not settling the dispute.

Information for Mediators (continued)

- that the parties must deliver statements of facts and issues to the mediator at least 14 days before the mediation session; and, once all of the required statements have been delivered to the mediator, the mediator must deliver each party's statement to each of the other parties;
- that mediation must occur within 60 days after the mediator's appointment but not later than 14 days before the date of trial, unless a later specified date is agreed to by all parties or is ordered by the court; and
- that when mediation is concluded a certificate of completion of mediation (Form 5 in the regulation) be delivered to each participant who requests one or their counsel and to the Dispute Resolution Office, Ministry of Attorney General (address below).

To review the Notice to Mediate (Family) Regulation, go to: www.ag.gov.bc.ca/dro/regulations-rules/

If the trial date is approaching and more time is required for the mediation

If you find that parties require additional time and their court date is approaching, you can inform your clients that either party can apply to the court for an order that the mediation be adjourned to a later date.

Contact Information

BC Mediator Roster Society
PO Box 9222 Stn Prov Govt
Victoria BC V8W 9J1
Toll Free: 1 888 713-0433
Phone: 250 356-8147 Fax: 250 387-1189
www.mediator-roster.bc.ca/

Dispute Resolution Office
Ministry of Attorney General
PO Box 9222 Stn Prov Govt
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