



Mediation in Legally Aided Matrimonial Cases

Legal Aid Department

Introduction

An underlying objective of the Civil Justice Reform implemented in 2009 is to facilitate the settlement of dispute through alternative dispute resolution methods such as mediation. Parties to the proceedings are encouraged to assist the court in achieving the objective. Mediation is therefore very much part and parcel of the landscape of civil procedures in Hong Kong nowadays.

This leaflet aims to provide information on legal aid for mediation in matrimonial cases.^(Note 1)

Legal aid for mediation

Once you are given legal aid for matrimonial proceedings and if your case is assessed to be a suitable one, legal aid will cover the expenses initially for you to undergo mediation with a view to resolving any disputes on maintenance, property adjustment and custody of children etc.

What you need to do

If you are minded to attempt mediation to resolve any matters in dispute, you should discuss this when you first meet with your solicitor. If mediation is deemed appropriate, your solicitor will in consultation with you help you choose a suitable mediator. He will explain to you the fees charged by the mediator and the payment terms. With your agreement, your solicitor will obtain the necessary approval from the Director of Legal Aid before you undertake mediation.

Role of the assigned solicitor in mediation

Mediators are not lawyers and they do not provide legal advice. If you need legal advice during the course of mediation, you should consult your solicitor.

^(Note 1) Detailed information on what is mediation, the roles of mediators and the advantages of mediation can be found in the leaflet “Family Mediation” published by the Judiciary.



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Outcome of mediation

If agreement is reached on the issues mediated, the mediator will prepare a “Mediation Agreement” or a “Memorandum of Understanding” for you and the other party to the proceedings to sign. Your solicitor will then apply to court to make the Agreement or Memorandum an order of the Court.

If no agreement is reached, you can continue with the proceedings to have the unresolved issues decided by court.

Discussion between parties in mediation is confidential and cannot be used in any subsequent legal proceedings.

Costs of mediation

Mediation costs are litigation expenses. If you agree to mediate, the Legal Aid Department will pay for your share of the mediator’s fees first. However, depending on the agreement you have with the other party to the proceedings or the order of the court, you may have to pay back some or the entire costs of mediation out of your contribution or from any money/property you get or keep in the proceedings because of the operation of the Director’s First Charge. ^(Note 2)

Dissatisfaction with mediators

If you are not satisfied with the conduct/service of the mediator, you may bring it to the attention of the mediation organization from which the mediator is accredited for appropriate action, if any, to be taken against the mediator. You may also advise the Legal Aid Department of your complaint but the Department, not being the regulatory body, is not in any position to take any disciplinary action.

^(Note 2) For detailed information regarding Director’s First Charge, please refer to the leaflet “Contribution towards Costs of Legal Aid Case and Director of Legal Aid’s First Charge” published by the Legal Aid Department.