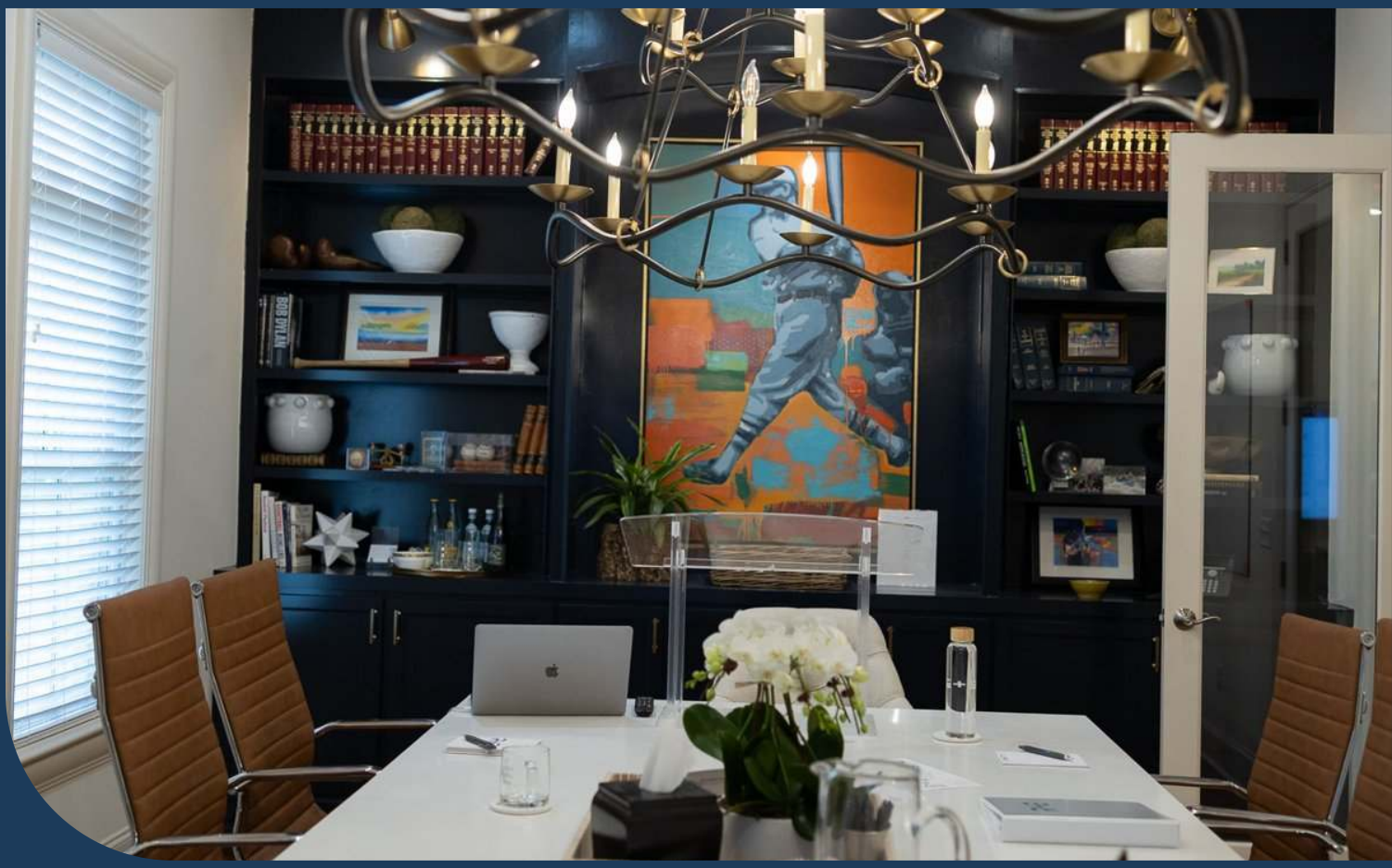
A CLIENT GUIDE

Preparing *for* Mediation

What to expect, how to prepare and how to walk out with an agreement you can accept.



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Preparing for Mediation

Mediation is the best chance most families have to end a divorce or custody dispute on their own terms instead of having a judge decide.

In mediation, you and your spouse sit down, with your lawyers and a neutral mediator, and work out the issues that matter most: custody and parenting time, child support, alimony, debts and the division of property.

This guide explains what to expect on mediation day and how to prepare, so you walk in ready and walk out with an agreement you can accept.

> About 85% of our cases settle at mediation.





PART ONE

Understanding Mediation

A mediator does not decide your case. A mediator helps you decide it.

What Is Mediation?

Mediation is a structured negotiation. A neutral third party, the mediator, helps you and the other side find common ground and reach an agreement you both sign.

In Mississippi family cases, the mediator is usually a retired chancellor or an experienced family law attorney. The mediator does not decide who is right or wrong and has no power to impose a result.

> The mediator is a neutral guide, not a judge. Their role is to help both sides find an agreement they can sign.

Whether you choose mediation or the court orders it, the decision to settle always belongs to you. Nothing is final until you sign it.

Why We Recommend It

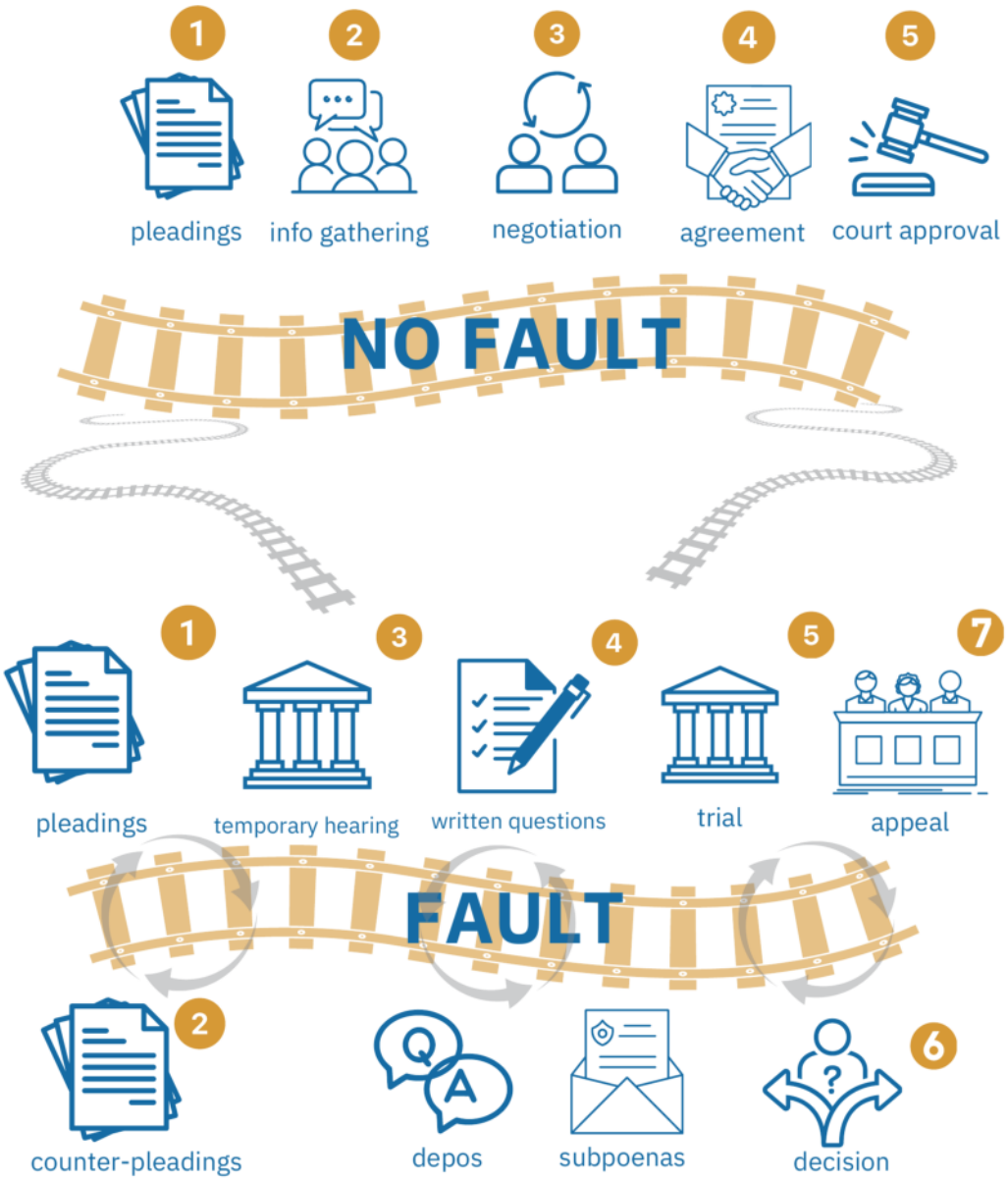
A negotiated agreement is almost always better than a ruling handed down after trial. You know your family, your finances and your children better than any judge. An agreement you shape can be tailored in ways a court order rarely is, and it usually costs far less in time, money and stress.

We recommend mediation in almost every case. Cases involving abuse are the exception.

Our founding partner, Craig Robertson, is a trained mediator. We have sat on both sides of the table and know what makes a mediation productive.

Where Mediation Fits

Every divorce runs on one of two tracks. The no-fault track moves from information gathering to negotiation, agreement and court approval. Mediation is where that negotiation usually happens.



A case can start on the fault track and move to the no-fault track at any point the parties reach agreement, including at mediation.

How a Mississippi Family Mediation Works

Most family mediations run a full day and follow the same basic pattern.

1. **Opening.** The mediator explains the ground rules, confidentiality and how the day will run. Most family mediations skip a joint session entirely.
2. **Separate rooms.** You and your R+E attorney work from your own room. Your spouse and their attorney are in another. You will not have to sit across the table from your spouse.
3. **Private meetings.** The mediator spends time with each side, listening, asking hard questions and testing positions. Time in each room varies. Waiting is normal.
4. **Offers and counteroffers.** The mediator carries proposals back and forth. Your attorney will help you evaluate each one before you respond.
5. **Agreement or impasse.** The day ends when both sides sign an agreement or the mediator declares an impasse.

Confidentiality

Mediation is confidential. What is said and exchanged in mediation cannot be used in court, unless the same information is discoverable through other means.

If you reach agreement, the attorneys put the terms in writing before you leave. Once signed, it can be submitted to the chancellor and enforced like any other order.

Selecting a Mediator

In most cases the attorneys agree on a mediator; sometimes the chancellor appoints one. For family cases, look for real experience in family law and in mediating family disputes.

Retired chancellors and seasoned family law attorneys each bring something different. A former judge can tell you how the case is likely to look from the bench. A practitioner knows how these cases settle.

We know the mediators who handle family cases in the Jackson metro area and across Mississippi. We will recommend one whose style fits your case and your personality.

Will the Mediator Give Opinions About My Case?

It depends on the mediator. Some only ask questions and carry offers. Others will tell you, usually in private, how they think a chancellor would view an issue, where your case is strong or weak and whether an offer is worth taking.

A candid opinion from an experienced neutral party can be valuable. Hearing it from someone other than your own lawyer often helps.

You always keep the right to disagree with the mediator, to reject any offer and to walk away without an agreement.

What Does Mediation Cost?

Family mediation typically costs **$2,500 to $4,000 per day** in mediator fees, in addition to attorney fees. The fee is usually split between the parties, though the split can be negotiated.

That is real money. Measured against the cost of discovery, depositions, expert witnesses and a contested trial, it is usually a bargain. Most cases resolve at mediation, often in a single day.

	Mediation	Trial
Who decides	You and your spouse	The chancellor
Timing	One day, scheduled by agreement	Months to years, on the court's calendar
Privacy	Confidential	Public courtroom and record
Flexibility	Terms built for your family	Limited to what the court can order
Cost	Mediator fee plus one day of attorney time	Full litigation and trial fees

Mediation is a long day for your attorney too, typically 8 to 12 hours of dedicated time on your case. Even when a case does not settle, mediation reduces trial preparation because both sides have tested their positions. In our experience, a good mediator is worth every penny.



PART TWO

Preparing for Mediation Day

Clients who prepare walk out more satisfied, whether it is their first mediation or their fifth.

Preparing With Your Attorney

Clients who prepare walk out more satisfied, whether it is their first mediation or their fifth. Every case, mediator and set of issues is different.

Your R+E attorney will be with you all day. Before mediation, we will meet to:

- Update your 8.05 financial statement and review the other side's 8.05
- Build an asset and liability chart together, which we may or may not share with the other side
- Identify the issues you agree on and the ones still in dispute
- Set your goals and your walk-away points
- Decide what we share with the mediator in our pre-mediation summary
- Plan how we will communicate during the day

Your Mindset

You will hear things you disagree with, and you will be asked hard questions. Keep an open mind.

Look for points of agreement. Even spouses in bitter disputes usually share a love for their children. Courtesy toward the other side tends to come back to you and keeps the conversation moving.

Questions to Think Through

You may not have firm answers yet, and your answers may change during the day. Thinking about them now will help.

What is this conflict really about for you? How does it look from your spouse's side?

Where do you and your spouse already agree? Where do you disagree?

What information or documents might change your mind, or your spouse's mind?

What do you need to feel the outcome is fair? What does your spouse likely need?

If you do not settle, what is most likely to happen at trial? What is the best realistic outcome, and the worst?

How will an agreement affect your relationship with your spouse as co-parents going forward?

How comfortable are you with the cost, time and uncertainty of going to court?

Is there anyone you need to consult before signing? If so, can they be available by phone?

What might your spouse say that will upset you, and how will you handle it?

What to Bring

Your attorney will tell you which documents to bring. Your job is to bring yourself, ready for a long day.

- [ ] Any documents requested by your attorney
- [ ] An open mind
- [ ] Comfortable clothes, with a layer in case the room runs cold
- [ ] Snacks and a water bottle
- [ ] Something to do while you wait: a book, a tablet or work to catch up on
- [ ] A phone charger

Plan for a Long Day

Mediation often runs into the evening. Clear your calendar and arrange childcare and pickups in advance, so you are not watching the clock when the best offers arrive. We usually order lunch in and work straight through.

Should You Bring a Support Person?

Sometimes a trusted friend or family member is a real help. Sometimes they add pressure or emotion that gets in the way. Talk with your attorney before you invite anyone.

Your Mediation Worksheet

Jot down where you stand on each issue that applies to you. We will review it together before mediation.

Children

Legal custody

Physical custody

Parenting plan

Holidays

Child support (monthly)

Health insurance

Uncovered medical expenses

Life insurance

Extracurricular activities

Private school

College

Other financial considerations

Property and Support

Marital home

Other real estate

Business(es)

Personal property

Automobiles

Boat / ATV / motorcycle

My retirement

Spouse’s retirement

Other investments

Bank accounts

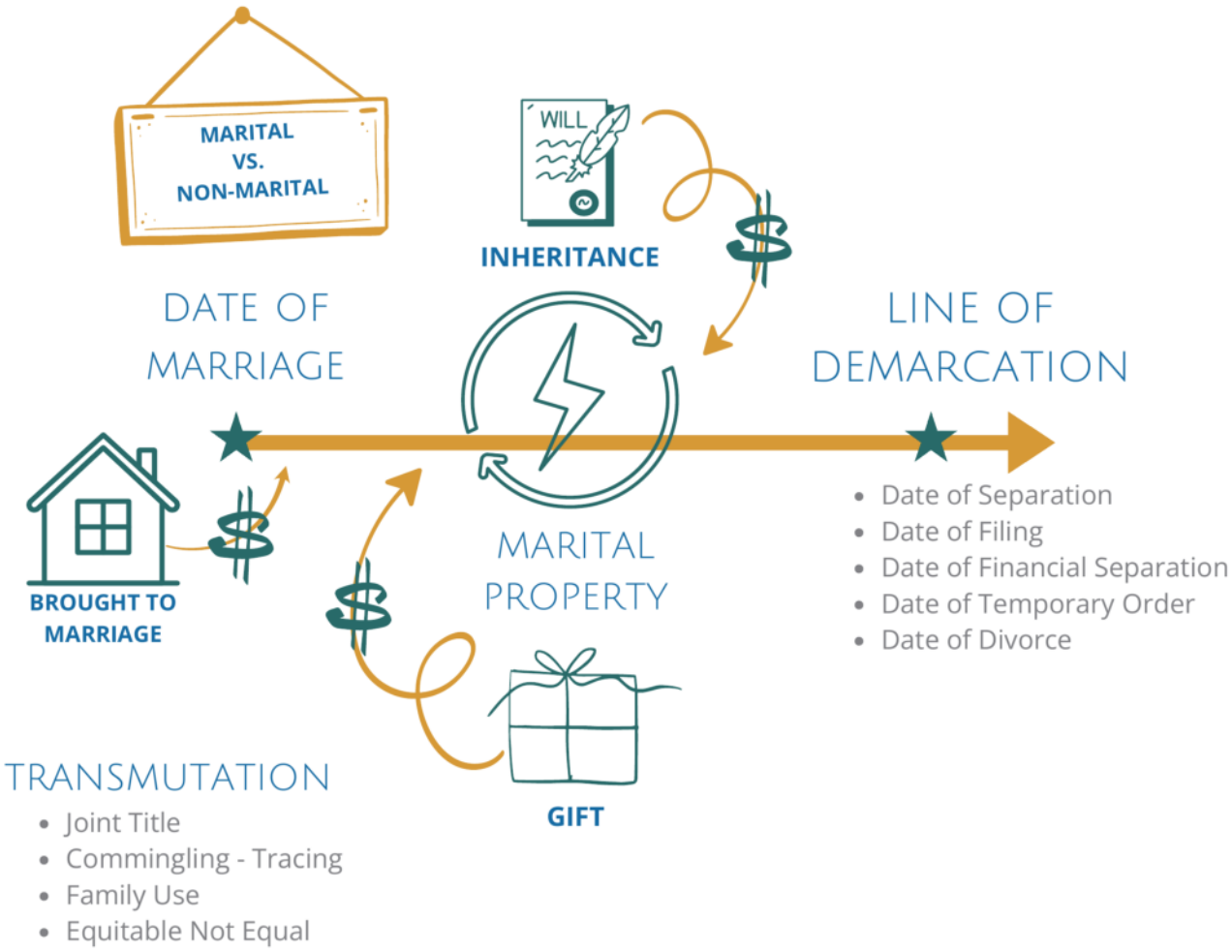
Debt

Alimony

Other

Marital vs. Non-Marital Property

Mississippi divides marital property equitably, which does not always mean equally. Before anything can be divided, it has to be classified.

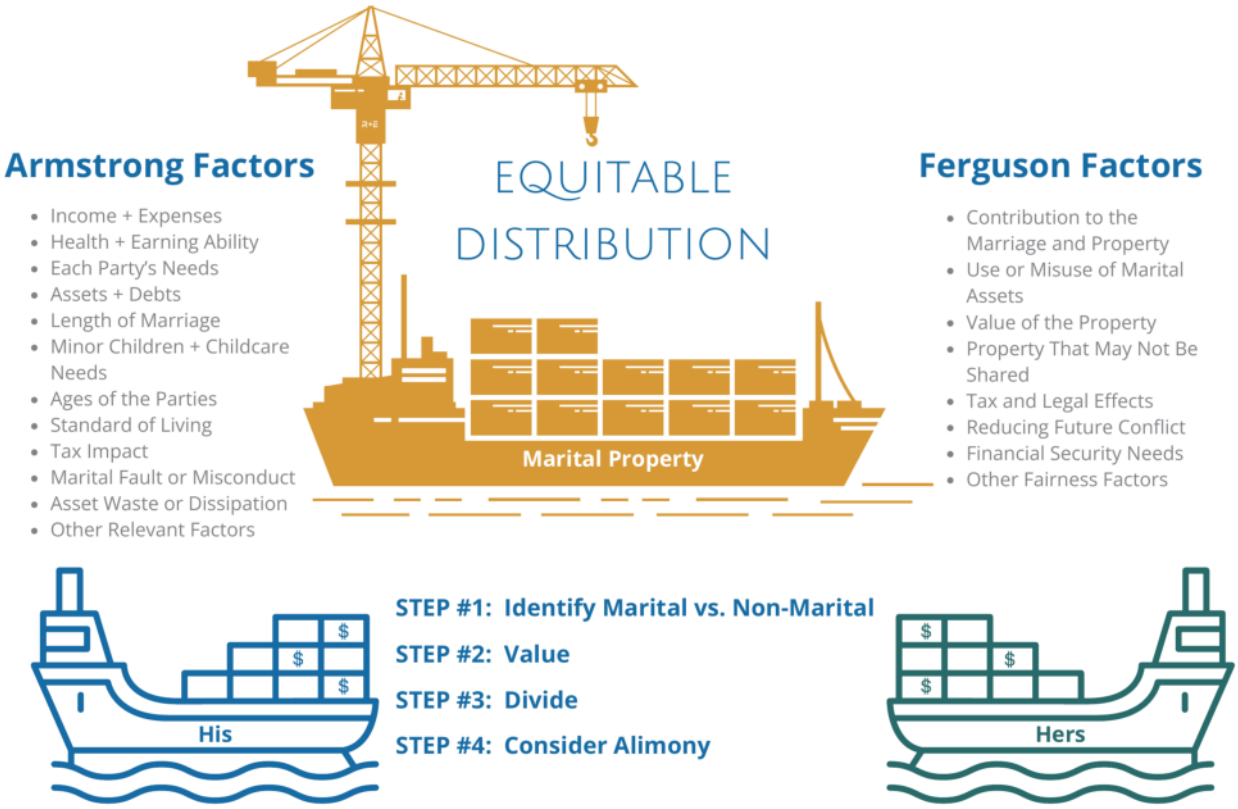


Property you brought into the marriage, inherited or received as a gift may be yours alone. It can become marital through joint title, commingling or family use.

The date that closes the marital estate depends on the facts of your case. Classification questions are often among the most important points we negotiate at mediation.

Dividing the Marital Estate

Think of the marital estate as a cargo ship. The court's job, and ours at mediation, is to unload it fairly onto two new ships.



Mississippi chancellors follow four steps: identify what is marital, value it, divide it and then consider whether alimony is needed. The Ferguson Factors guide how property is divided. The Armstrong Factors guide alimony.

A mediated agreement follows the same logic, but you and your spouse decide where every container goes.



PART THREE

Finding Common Ground

Look for points of agreement. They are almost always there, especially when it comes to your children.

When Children Are Involved

The goal is not just to “win” a custody case. The goal is to raise children who know they are deeply loved by both of their parents.

A good parenting plan answers the hard questions before they become problems:

- Where will the children spend their time?
- How will holidays, birthdays and school breaks be divided?
- Who makes educational and medical decisions?
- How will transportation and exchanges work?
- How will you communicate when changes become necessary?

Build in structure, but leave room for grace. Work schedules change, ball games get rescheduled and grandparents celebrate milestone birthdays. Flexibility is not weakness. It is maturity.

> “Will this matter to my child five years from now?”

Keep your children out of the middle. If they are struggling, get them to a counselor.

Adapted from *The Parenting Playbook*, a free R+E resource at **robertson.ms/the-parenting-playbook**.

Approaches to Negotiation

There are two broad ways to negotiate, and most mediations use both.

Positional

Each side stakes out a number or position and trades offers toward the middle. It is familiar, but it can harden positions and leave good solutions on the table.

Interest-Based

Each side explains what it really needs and why, and the parties look for options that meet both sets of needs. It produces the most creative agreements, especially parenting plans.

We will help you decide when to hold firm and when to open up about what matters most to you.

> Even spouses in bitter disputes usually agree on what matters most: their love for their children.



PART FOUR

Closing the Deal

Nothing is final until you sign it.

After Mediation

If You Settle

The signed agreement becomes the basis for your final judgment. In a divorce, that usually means an irreconcilable differences divorce with a property settlement agreement and, if you have children, a parenting plan. We prepare the final documents and present them to the chancellor.

If You Settle Some Issues

The agreed issues can be preserved, and only the remaining ones go forward. That narrows the fight and the cost.

If You Reach Impasse

The case is not over. Some cases need more information, more time or a second session. Many settle in the days or weeks after mediation once both sides reflect on the last offers.

If not, we prepare for trial knowing far more about the other side's position than we did before.

More From R+E

PODCAST

It's Not About the Curtains: Mississippi Mediation with Susan Steffey

robertson.ms/podcast · Episode 65

Sure, Martha, I'll Go: A Conversation with Retired Chancellor Edward Patten

robertson.ms/podcast · Episode 94

VIDEO

Mediation, Part 1, with Professor Debbie Bell

vimeo.com/16034913

Mediation, Part 2, with Professor Debbie Bell

vimeo.com/16035602

Opting Out of Divorce Court for a Better Outcome

vimeo.com/937933494

READING

You Should Mediate Your Divorce

robertson.ms/mississippi-family-law

The Olive Branch

robertson.ms/mississippi-family-law

The Parenting Playbook

robertson.ms/the-parenting-playbook

About Robertson + Easterling



Robertson + Easterling is a boutique Mississippi family law firm helping individuals and families navigate divorce, child custody, complex financial disputes and the life transitions that come with them.

We do not create unnecessary conflict. We do not escalate for sport. We tell the truth, even when it is difficult, and we work alongside our clients to make wise decisions for today and tomorrow. When a fight is necessary, we are ready.

We are committed to educating Mississippi families through our podcast, blog, videos, free eBooks and a growing library of resources.

Disclaimer

This guide is offered as an educational resource and is for informational purposes only. It is not legal advice, does not create an attorney-client relationship and is not a substitute for advice from a licensed attorney who has evaluated your circumstances. Every case depends on its own facts, the applicable law and the judge assigned. Robertson + Easterling assumes no liability for decisions made based on this guide unless and until we formally represent you through a signed engagement agreement.

ROBERTSON EASTERLING
DIVORCE AND FAMILY LAW

Whether or not you are ready to step into the ring, you want veteran warriors in your corner.

Questions? We're here.

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