



Center for Mediation & Training
www.divorcemediation.com
845.638.4666 (Nyack) | 212.799.4302 (NYC)

Frequently Asked Questions

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1. Why Choose Divorce Mediation?

Separation and divorce are among the most painful and disruptive events that an individual and family can experience. The problems are both financial and emotional, deeply touching all members of the family. Mediation aims at reducing this tension, not increasing it. With the help of the mediator, couples negotiate their own settlement and learn techniques for resolving future differences. Mediation is for couples who want to retain control over the decisions that affect their lives and don't want their children caught in the middle. Mediation is not just for couples who already know how to cooperate. Mediators show people how to work together productively in spite of their anger. During mediation other professional services are sometimes needed. The Center maintains a network of consultants including accountants, lawyers, financial planners, career counselors, psychotherapists and child psychologists.

2. How Does Divorce Mediation Work?

Instead of fighting with each other about every issue in the court system, which is time consuming and very costly, in Divorce Mediation, a specially trained mediator will help you and your spouse work together to reach an agreement. Mediators help couples separate their spousal role, which is ending, from their parental role, which is continuing. Couples learn to evaluate their present financial condition and provide for their future financial needs. With the mediators help, agreements can be reached to handle both immediate and long range concerns. The mediator will focus on the relevant issues and help identify possible options. You will actively participate in the negotiations leading to reasonable solutions and a mutually satisfactory agreement that considers the needs of all family members. The divorce mediator's job is to help a couple arrive at an acceptable settlement, with no winner or loser. The mediator is not an advocate for either party and does not make any decisions. Instead, the mediator helps the couple explore all options and their consequences. The mediator works to ensure that neither party gives away too much, nor dominates the other. Even though one party is more powerful or a better negotiator, the mediator helps to balance the power. The mediator does not take sides; instead we try to help both of you do your best.



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3. Will I Need an Attorney?

Both of you may obtain independent legal advice during the mediation process, and you are encouraged to have separate lawyers review your agreement before it is signed. Once signed your agreement becomes a binding contract. The agreement may then be used as the basis for an uncontested divorce. Even when the mediator is a lawyer, he/she cannot give either party legal advice. During divorce mediation, we may provide legal information, but we will not give you legal advice.

We need to consider moving some cases from trial by battle in the courtroom, to mediation. Divorce, child custody are prime candidates. — Hon. Warren E. Burger, Former Chief Justice, U.S. Supreme Court

4. What Points are Decided?

While each marriage has its own unique issues, the most common issues discussed during the divorce mediation process are:

Parenting Issues, including

- Legal and residential custody of your children
- Parenting time
- Parent communications
- Relocation of a parent

Division of Assets & Debts, including

- Your house
- Bank accounts
- Retirement accounts
- Investment properties
- Family owned businesses
- Premarital assets
- Joint and individual debts

Support, including

- Spousal Maintenance / alimony



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Child support
Health insurance
Child care expenses
College costs

Tax considerations

Divorce, including

Timing
Grounds

Ways to Avoid Future Problems

5. What are the Steps Involved?

At the first session, the mediation process is explained in detail. After this, the couple, with the help of the mediator, begin to discuss their concerns. Then they gather any necessary financial data. Step by step, they make decisions about the type of agreement they want. During this process, care is taken to make sure that the needs of all family members are considered. These mediation sessions usually last from one to two hours. Once a tentative agreement has been reached, a formal agreement is drafted by an attorney case consultant.

6. How Long Does it Take?

Sessions are usually scheduled a week or two apart. While it can take as little as 2 hours, the average length of time it takes to reach an agreement is 6-12 hours. Unlike the court process, mediation does not drag indefinitely. The number of sessions depends upon the things affecting you, such as the division of assets, debt allocation, support and co-parenting issues, as well as how you prepare for the sessions. You will decide on the pace of your mediation. Generally, concluding an agreement in an adversarial divorce proceeding can take 1 or 2 years.



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7. How Much Does Divorce Mediation Cost?

There are no hidden fees. Mediation time is charged on an hourly basis. In Nyack, our hourly fee is \$350, in Manhattan our hourly fee is \$400.

When mediation is finished, a written agreement and divorce papers must be prepared. The fees vary by location and complexity. Please ask your individual mediator for exact numbers.

In general, the retainer charged by most divorce lawyers will be equal to or greater than the entire cost of a mediated divorce. Just as importantly, there will only be one fee for both of you, not two. The cost for a mediated settlement, including the cost of attorney review, will be less than the cost of a litigated divorce.

8. Does Divorce Mediation Require a Retainer?

Unlike attorneys who demand \$5,000, \$7,500 or more, for divorces, we do not require a retainer. You simply pay at the end of each session. We accept checks, cash, Amex, Visa, and MasterCard for your convenience.

9. What are the Benefits?

Here are some of the benefits to choosing divorce mediation over litigation:

- takes less time, so you can move ahead with your life,
- allows you to control the decisions that affect your life,
- benefits children and others by reducing conflict,
- avoids public disclosure of financial and personal matters because it is confidential,
- promotes communication and cooperation,
- there are no Court time limits or other time constraints, rather you proceed at your pace,
- you focus on your needs and the best interests of you and your children,
- you to craft a solution that's right for you,
- you can structure your divorce agreement in a non-standard way, whether that involves division of the marital assets, co-parenting or alimony,
- you have options which are not provided in litigation, and



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- mediation costs less – the money you save by not litigating remains with you.

10. Who are the Mediators?

All mediations are conducted by experienced divorce attorneys or family therapists who have special training in divorce mediation which includes divorce law, financial planning, taxes, and the emotional effects of divorce on adults and children. You can learn more about the Center Mediators [HERE](#).

11. Are All Divorce Mediators the Same?

Absolutely not. In addition to utilizing different approaches and styles to the divorce mediation process, the qualifications of divorce mediators are vastly different. At the Nyack office of the Center for Mediation & Training, the mediator is Steven L. Abel, and at our NY City office the mediators are Kenneth Neumann and Donna Petrucelli (*these will be linked to the staff page*)

12. Does a Mediator Have to Be Licensed in New York?

It's a bit scary, but there are no licensing requirements or even regulations to being a New York divorce mediator. Anyone can say they are a mediator. However, in New York most mediators are professionals having a license as a lawyer or in a related field, such as social work and psychotherapy. It's very important to know what the background and experience level is of a mediator before you hire one.

13. What Should I Look for When Selecting a New York Divorce Mediator?

You should select a divorce mediator who is experienced, and accredited by NYSCDM. The mediators should be able to explain divorce law to you, provide you with clear answers to your questions, and be mediating divorces on a regular basis. Finally, you should feel comfortable talking to him or her.

14. What is NYSCDM?

The New York State Council on Divorce Mediation is a non-profit organization dedicated to the practice of dispute resolution through mediation. NYSCDM grants



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accreditation to those mediators who have a law degree, mental health or business advanced degree, who have undertaken extensive mediation training and handled 25 mediated cases in over 250 hours.

15. Do We Owe it to Our Children?

Everyone knows that divorce is a traumatic experience and of course, your divorce is going to be difficult for your children. However, going to war over your divorce will not make it easier for them. It will only make it more difficult. When all of what you are now going through is over, it is essential that the two of you are able to deal effectively together, at least where your children are concerned. Your marriage may be over, but your relationship with your children as their parents is not. All of the studies on the effects of divorce on children have come to the same conclusion. It is not the fact of your divorce that will do permanent damage to your children. It is how you go about it. Did the two of you sit down together to work out the details of your divorce? Or did you go to war over it, to get as much as you could and to give as little as you have to?

Yes, you owe it to your children not to go to war.

16. How Does Divorce Mediation Differ from Going to Court?

Divorce litigation is an adversarial process where attorneys argue as best they can for their client, which often creates more negative encounters and bad feelings. Divorce attorneys exchange information through complex discovery procedures such as lengthy net worth statements, interrogatories (dozens of written questions answered by the opposing party under oath) and by assembling documents such as three to five year's worth of credit card statements, tax returns, and bank statements, to name a few.

There could also be subpoenas served on individuals, organizations or companies to obtain information from them about the opposing party. In some cases, the parties and other individuals are deposed, which is a process whereby a person answers questions under oath in the presence of the divorce attorneys and a court stenographer. Depending on the complexities of the case, each side may hire their own experts. These experts may include accountants, appraisers, employability evaluators, child therapists, business appraisers, actuaries, psychiatrists, and



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pension evaluators. The divorce litigation process is very adversarial and is geared to amassing information to benefit your side while weakening the opposing side so that a judge will rule in your favor after a trial is conducted. In a divorce trial there's no jury, only the judge.

Mediation differs significantly from divorce litigation. Mediation encourages you to work together to reach a mutually beneficial agreement. This is accomplished by coaching, educating and guidance provided by the mediator. Because there is less fighting involved, and more problem solving, divorce mediation helps you stay focused on your real needs and the best interests of your children. Mediation allows you to make your own important decisions about your lives, rather than having a judge or attorneys decide your future. Divorce mediation is also significantly less expensive than litigating the case, which sometimes costs more than \$50,000 for each side.

17. My Spouse is Very Powerful, How Can I Hope to Be Successful in Mediation?

The mediator will not allow one party to overpower the other in mediation. If one of the parties is unable to be effective during this process, the mediator will stop the mediation. However, many people who considered themselves to be the "weaker" of the two spouses have been quite effective in mediation. As an unsophisticated spouse of a very powerful business executive once said, "I have the power to say NO, and my spouse better listen or we'll wind up in court."

18. We Don't Get along Well - How Can We Possibly Mediate?

Although many mediating couples are amicable and work well in mediation, there are also many couples who are very emotional about the divorce and don't think they can negotiate face to face. Part of every qualified mediator's training is in assisting couples who have high emotions but who still would like to work things out peacefully. People do calm down and become effective mediation participants when they see that the process can work without adding to the high emotional and financial cost of divorce. Mediators guide you through a problem solving process that encourages you to attack the problems, not each other.



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19. How Can We Be Productive When We Can't Talk to Each Other?

The presence of a trained divorce mediator dramatically changes the interpersonal dynamics of the divorcing couple. An accredited divorce mediator has the skills necessary to foster constructive communications. Through the process, you come to understand that it's in the best interests of your family to work together to reach an acceptable settlement. The mediator facilitates the communication by making sure each of you is given uninterrupted time to speak, asking you to restate or explain a point when necessary, and asking questions to make communication clear. The mediator also provides information about the legal system, how issues may be viewed by lawyers or judges, and what alternatives there are for solving issues. When necessary, the mediator will refer you to third party experts for services such as appraisals.

20. Are There Different Approaches to Divorce Mediation?

There are three main models of practice used by divorce mediators. They are facilitative mediation, evaluative mediation and transformative mediation. We utilize a combination of all three models in a practical, goal oriented approach. We have found that this synergistic approach works best to help couples communicate and arrive at a separation agreement. However, there are mediators who adhere to just one of the three models of approach of mediation and you should be aware of the differences between each model.

- Facilitative mediation emphasizes a process in which you are actively involved in making the decisions that affect your lives. It involves systematically identifying issues through collaborative communication. Facilitative divorce mediation is equally focused on getting you to communicate with each other and achieving a resolution or settlement. The facilitative mediator typically offers options but does not give opinions about the fairness of a proposed agreement. The fairness of the agreement is left to you to decide, rather than what may be the standard in court. In addition, most facilitative mediators hold joint sessions, and rarely hold individual sessions.

- The purpose of the transformative mediation model is primarily to effectuate a change in your communication style and how you deal with each other. The idea is



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to transform the relationship and is more psychotherapeutic than facilitative divorce mediation. The transformative mediator is more concerned with each person's empowerment and recognition and changing the quality of your interactions with the other than with seeking a settlement. The transformative divorce mediation process seeks to positively alter you's interactions so that permanent change could occur as you discover your own way through the conflict.

- Evaluative mediation is based upon a settlement conference format. The divorce mediator will assist in evaluating the positions of you and offer substantive knowledge and experience. In evaluative divorce mediation, the divorce mediator may have individual or joint sessions with each of you and/or utilize shuttle diplomacy. Settlement is the primary goal of evaluative mediation and usually it is placed ahead of any process. Evaluative approach mediators look at the cost benefit analysis and legal perspective of your positions while seeking to promote a resolution of the issues.

21. If We Already Started New York Divorce Litigation Can We Still Mediate?

Absolutely. The New York Supreme Court encourages divorcing litigants to mediate. But judges are required to follow time limits so you should consult with your divorce attorneys about how the schedule will affect mediation.

22. Will I Be Left with a Legally Binding Agreement?

Yes. Agreements are binding upon people because they sign them, and because they are notarized as required by the law. Mediated agreements are just as binding as agreements reached during the court process and sometimes more binding than a judge's decision.

23. How Do Divorce Court Documents Get Filed?

If the mediator is an attorney, the attorney can assist the parties by drafting and filing all papers with the court, including the agreement, judgment, and final papers to be filed with the court.



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24. Will We Have to Appear in Court?

No court appearances are necessary by either party.

25. Suppose That I'm Not Happy with Mediation?

Unlike a judge, a mediator has no power. He or she does not have the power to make any decisions in your life, not even have the power to make you attend the meetings. You are free to stand up and leave at any time. The same is not true of an adversarial divorce in court. While you have the power to start it, once it has begun, it takes on a life of its own. Moreover, rather than being the principal players, as you will be in divorce mediation, the two of you will be bit players in the drama that you have set in motion. As those who have turned to adversarial legal proceedings will tell you, you will literally have no control over those proceedings. On the contrary, it will become like a runaway train, and it is impossible for one of you to stop it.

26. Can Other Persons Attend or Participate in the Divorce Mediation Session?

If both parties agree, other professionals such as accountants, child psychologists or attorneys may attend a mediation session to advise or clarify specific issues. If both of you agree, the parties may also bring a relative or friend to lend moral support but only with agreed upon limitations to the extent of their participation. Children may also be present if both parents agree, but not in the very first session.

27. When Should We Begin Divorce Mediation?

When you decide to divorce. A divorcing couple's disagreements and hard line positions can become deeply embedded over time, and this is especially true when attorneys with an aggressive style are retained to represent you, so sooner rather than later is always better. Many of our clients came to the mediation table out of frustration with "the legal system" after the emotional and financial toll, lost time from work and unproductive court appearances became too much to bear. They often say they wish they had used mediation from the beginning.



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28. Must We Be in the Same Room, or Can Our Mediator Act as a Go-between?

Direct interaction between the couple with the mediator in the same room is customary, the most effective way to mediate, and it's how we usually practice. However, a divorce mediator will, at appropriate times, offer to take a break to relieve tension or to meet privately with both parties to discuss a sensitive issue that's preventing progress. It's known as "caucusing" and it's a commonly used procedure in the mediation profession. It's a form of "shuttle diplomacy" with the mediator going back and forth between the couple who are in separate rooms.

29. Will the Mediator Pressure Us into Saving Our Marriage?

Mediators aren't couples therapists. Their job is not to reunite you. Mediators focus on helping you come up with a way to separate that you both think is workable.

30. When Is Mediation Not Appropriate?

There is physical or emotional abuse that prevents you from speaking for yourself. Your spouse's judgment is impaired by drug or alcohol addiction, or other mental disability.