

Please read this document - and have your spouse read it - and if you both think that Divorce Mediation may be right for you, then call our office at 718-979-5200 and request an “Initial Mediation Consultation”. The cost of that 30 minute initial consultation is only \$100, which will be credited back to you if you retain our firm for Divorce Mediation within 30 days.

WHAT IS DIVORCE MEDIATION?

Thank you for inquiring about Divorce Mediation. Divorce Mediation was developed in the mid 1970's in response to the cost and emotional trauma caused by the traditional Divorce Court System. Basically, Divorce Mediation is a voluntary settlement process in which a husband and wife use a trained neutral person, called a Divorce Mediator, to help them resolve the issues surrounding their divorce. These decisions generally revolve around three areas, (1) parenting arrangements, (2) support for the children and possibly a spouse, and (3) the division of assets including the house, cars, pensions, bank accounts, etc.

HOW DOES DIVORCE MEDIATION DIFFER FROM GOING TO A REGULAR DIVORCE ATTORNEY?

It is important that persons considering Divorce Mediation understand the basic difference between Divorce Mediation and the normal process of going to a divorce attorney who starts a divorce lawsuit against your spouse. In Divorce Mediation, you and your spouse jointly decide to begin voluntary settlement negotiations with the help of the trained neutral person. Our attorney-mediators are trained Divorce Mediators and are also Family Law Attorneys. The mediator's job is to assist both of you to discuss each of your own goals, your desires with regard to rearing your children, support, division of assets, etc. The Divorce Mediator has no decision-making power. Thus, the Divorce Mediator cannot order one of you to pay child support to the other or to transfer title to a house to the other person. Rather, the Divorce Mediator helps promote communication and cooperation between the two of you so that the two of you can control the decisions that will effect your lives.

If one spouse goes to a regular Divorce Attorney, the attorney will frequently advise the client to institute suit for divorce and, usually, to make application to the Court for interim child support, interim alimony, etc. The other spouse, upon being served with Court papers, will then hire his or her own matrimonial attorney. At this point, most attorneys will advise their clients not to discuss the case with their spouse, but rather allow all negotiations to be handled through the respective attorneys.

The Divorce Mediator seeks, on the other hand, to develop various settlement options and to discuss them with both parties in an effort to get both parties to agree on a "win-win" settlement.

WHAT ARE THE BENEFITS OF DIVORCE MEDIATION?

The first and most important goal of Divorce Mediation is to reach an agreement between the parties. However, experience has shown us that Divorce Mediation also helps promote communication between the spouses and a spirit of cooperation between them. It also lets the both of you control the decisions that will effect your lives in the future, rather than divorce attorneys, or a Judge. Divorce Mediation generally costs between \$2,750 and \$8,500 (total for both parties), although sometimes fees can be lower or higher in unusual cases. Divorce Litigation, on the other hand, frequently results in each party paying lawyers' fees of \$10,000, \$20,000, \$50,000 or even more! Our firm has handled bitter divorces where the legal fees for our divorce client have exceeded \$100,000!

Another benefit of Divorce Mediation over the traditional Divorce Court procedure is that Divorce Mediation is totally confidential. If one or both parties has been or are presently working "off the books", or they have sources of income which they have not reported on their income tax returns, Divorce Mediation is often preferable to Court Litigation because the entire Divorce Mediation process is confidential and the Divorce Mediator is under no obligation, unlike a Judge, to notify the IRS about unreported cash income.

If children are involved, Divorce Mediation is often extremely useful since it will substantially reduce the conflict between parents. Divorce Court tactics, such as making a demand for custody not out of love for the children, but as a negotiating ploy to reduce child support payments, are totally foreign to the concept of Divorce Mediation where both of you put your children's needs first.

Lastly, Divorce Mediation can often be much quicker than traditional Divorce Court litigation. To obtain a contested divorce in Staten Island generally takes somewhere between 10 and 16 months. With Divorce Mediation, on the other hand, the parties generally reach a settlement agreement with 4 and 8 weeks. It then usually takes about 4 months thereafter for the divorce to be obtained, but generally neither party has to appear in Court.

ARE ANY CASES NOT GOOD CANDIDATES FOR DIVORCE MEDIATION?

Generally, Divorce Mediation is not recommended in two cases. First, where

there has been a history of physical or severe emotional abuse of one spouse by the other. In such cases, the possibility that one spouse will be intimidated by the other party is simply too great to recommend Divorce Mediation. The second instance where Divorce Mediation is generally not a good idea is where one party lacks substantial financial information about the other party's personal or business affairs and that party does not trust their spouse to be completely honest and candid with them. For example, if your spouse runs a large cash business and you believe there may be hundreds of thousands of dollars of unreported cash and you simply have no trust that your spouse will admit what his or her real income is from that business operation. Another example would be where you believe that your spouse has Swiss bank account with hundreds of thousands of dollars in it, but you have no definite proof of same and you do not believe that your spouse will admit the truth. In these two examples, Divorce Mediation is generally not recommended and you should consult an experienced divorce attorney.

HOW DO WE BEGIN DIVORCE MEDIATION?

If after reading this letter and the enclosed information, you and your spouse both feel that Divorce Mediation makes sense to the both of you, then you should call our office and advise our receptionist that you wish to schedule an initial orientation session for Divorce Mediation. This orientation session takes approximately one-half hour and there is a fee of \$100. At the conclusion of that orientation session, the two of you will then have three choices. First, if either of you decides that Divorce Mediation is not for you, that ends the matter and neither of you has any further obligation to our law firm. On the other hand, if both of you wish to proceed to Divorce Mediation, we will then schedule your formal orientation/initial Divorce Mediation session, generally within a week to ten days after the orientation session. You will be given a Retainer letter and will be asked to sign it along with a Retainer Deposit of \$2,500. This Retainer Deposit is refundable to the extent not used. The third option is for the two of you to simply advise us that you wish to think over the whole process, which is also fine. Once the two of you do decide to proceed, you will then call our office and advise our receptionist that you now definitely wish to hire us for divorce mediation and they will schedule the first regular Mediation session.

IF WE DECIDE NOT TO PURSUE DIVORCE MEDIATION, DOES YOUR FIRM HANDLE REGULAR DIVORCE CASES AS A DIVORCE ATTORNEY?

Once the Divorce Mediator sits down with you and your spouse, even if only for the \$100 initial Mediation/Orientation session, we will not then represent one of you in a contested divorce. Should you and your spouse, after reading this summary sheet, decide not to see us for a Mediation/Orientation session, then, of course, either of you are free to hire our law firm to represent you in obtaining a divorce. We believe that even in a traditional divorce litigation matter, there is frequently an opportunity to enter into settlement negotiations with both parties and their respective attorneys in an effort to work out an out-of-Court settlement that will not be harmful to the children and that the both of you can live with. However, if our client needs temporary support, an Order of Protection, Temporary Restraining Order, etc. our firm, having then been retained, would immediately go into Court to obtain whatever emergency relief our client is needed.

We hope this brief explanation will help you and your spouse to decide whether or not you wish to utilize Divorce Mediation Services.

FACT SHEET ON FAMILY AND DIVORCE MEDIATION

◇: What is Divorce Mediation?

A: Divorce Mediation is an enlightened way to resolve financial and parental issues when couples decide to separate and divorce. Mediation seeks to minimize the adversarial process by helping couples to negotiate the settlement issues that will become the basis for a formal agreement, by enlisting the aid of a trained mediator.

◇: Who can use Divorce Mediation?

A: Mediation is for people who:

1. Want control over the decisions affecting their lives.
2. Want co-operative long-term family solutions, focusing on the future for themselves and their children.
3. Want to avoid court-ordered decisions.
4. Want to reduce the time, stress, and expense of an adversarial divorce.

◇: What is the Mediator's role?

: The mediator is a neutral third party who provides a structured environment in which couples can make decisions. The mediator is a catalyst who helps the parties reach an agreement, but who has no authority to impose a settlement. A mediator can make suggestions, propose options, reason, persuade, re-frame issues, formalize offers, and recommend possible ways of resolving a disagreement.

Q: What is the Attorney's role?

: Couples planning a separation or divorce are urged to consult separate attorneys to obtain legal advice prior to signing any Agreement. One of

the party's attorneys will then submit the documents necessary to obtain a divorce to the Court.

◇: What issues may be covered in Mediation?

- A:
1. Financial and Property
Determination of marital income, assets, liabilities.
Development of budgets. Finding a system for division of marital property. Defining and rescheduling spousal maintenance and/or child support.
 2. Parenting Arrangements

Assessment of children's and parents' needs.
Exploration of possible living arrangements.
Defining opportunities for parental access to children.
Considering changing needs as children grow older.
 3. Future Planning and Decision Making

Anticipation of future needs and possibilities.
Alternative for avoiding future litigation.
Development of procedures for problem-solving and decision making.

◇: How does the process work?

- : 1. Assessment
- Divorce Mediation is intended for couples who are ready to separate or divorce. The orientation session with the mediator is used to evaluate whether mediation is appropriate. At that point, the couple and the mediator decide, either to (1) proceed with the mediation process, or (2) to work on the issues using other professionals such as psychiatrists, social workers, etc., or (3) to each retain an attorney and proceed to adversarial divorce litigation in State Supreme Court.

2. Issue Identification and Preparation

Family information and financial data forms are completed. Issues to be decided are identified, and the parties begin to work with the mediator on setting priorities. Focus on the issues is an important step in finding ways to resolve them.

3. Negotiation

Serious attention to possible alternatives and the weighing of choices offer the parties the opportunity to move toward decisions. Throughout negotiations, care is taken that all family members' needs and concerns are addressed.

4. Agreements

The results of the mediation sessions is a proposed Agreement, also called a Memorandum of Understanding, which is prepared in draft form by our attorney-mediator. Each party receives a copy of this proposed agreement so that his or her attorney may review the proposed agreement, answer any questions he or she may have, etc. One attorney thereupon prepares the agreement in final form, it is signed by both of you and one attorney files the necessary papers to permit his client to obtain an uncontested divorce, which will result in a Judgment of Divorce which incorporates the terms of the Memorandum of Understanding into it.

◇: How long is a typical Mediation:

A. In general, mediation is a short-term process, usually lasting about 8-12 hours, or 5 or 6 sessions of one to one and one-half hours each if there are parenting issues to consider. If the issues are only financial in nature, the time is usually less. Typically, weekly meetings are scheduled, and the work can be completed in 4-12 weeks.

◇: What does a Mediation cost?

A. The fee for the orientation session is \$100.

At the orientation session, the mediator will help the separating or divorcing couple explore whether mediation is appropriate for them. No confidential information will be taken. For the mediation sessions, the fee for Ms. Karp is \$325 per hour for our associate attorney-mediators to \$375 per hour for Mr. Leininger. Mr. Leininger has completed over 250 divorce mediations over the past 15 years and we believe he is the most experienced attorney-divorce mediator on Staten Island. A retainer of \$2,500 is taken as a Retainer Deposit. The fee is usually shared by the couple. The cost of mediation is usually offset to some extent by a reduction in the time necessary for consultation with an attorney, since our attorney-mediator will have already prepared the draft Separation Agreement or Property Settlement Agreement, and will make available to the attorney obtaining the divorce a cdrom in either Word Perfect or Microsoft Word format of the Agreement.

Mediation vs. Litigation in Divorce: The Difference

Mediation works very well in terms of saving money. However you should NOT mediate if you suspect or know your spouse is trying to harm you emotionally or financially, or if due to past domestic violence, you are afraid of your spouse. If that is the case, you may be better off with a strong, ethical attorney.

The differences between litigation and mediation are substantial.

If you Litigate in Court

Combined attorney fees may be more than \$40,000. (Much more if custody or a business is involved.)

Outcome decided by a judge.

Attorney negotiates property, tax and custody issues.

Aggressiveness wins.

You will be advised not to speak to your spouse.

You follow the court schedule and not yours.

The Courtroom is open to the public and people in the Courtroom may learn about the alleged misconduct and about your assets and debts.

Property issues decided by others.

Parenting plans decided by others.

Post Divorce is usually as hostile as pre divorce

Post Divorce agreements often broken

Children are more stressed. If custody is contested, the court takes charge and you

lose a lot of decision making power for your children. Psychological evaluations of the family often take place and are intrusive and expensive.

Children's grades often go down even if custody is not contested.

Emotionally draining, often to the point of illness.

If you Mediate

Outcome determined by you and spouse.

Mediation is confidential.

You decide what issues are to be mediated and create a plan that works for both.

The children will see their parents trying to working together to settle differences.

Parenting plans can be flexible and more easily modified.

You maintain control and feel empowered.

Flexibility in timing of decisions.

The cost is frequently less than 20-75% of a contested divorce.

You do not have to deal with hostile attorneys in an adversarial situation.

The goal is a fair settlement, not a winner and a loser.

Post divorce is more free of conflict and decisions are usually adhered to because you have participated in the process of making them.

RULES AND GUIDELINES FOR MARITAL MEDIATION

1. General Principles

- a. Mediation is a cooperative effort between two people wherein both win, not a competitive effort where someone loses. Each person freely chooses to participate in mediation and takes full responsibility for his or her decision to do so. Consequently, blame or fault have no place in mediation. All issues to be resolved in mediation, such as division of property or spousal support, shall be on the basis of demonstrated need, and shall not be increased or decreased due to the past actions of one or both spouses.
- b. Each person has a sole responsibility for his/her own thoughts, feelings and actions. Because the aim of mediation is an equitable agreement, each person agrees not to belittle or abandon their own needs or the needs of the other person. For spouses, the marriage is considered a partnership, giving both persons rights to the contributions of the other, regardless of whether that person worked inside or outside the home or worked for more or less pay.
- c. The mediator is not acting as a lawyer, therapist or judge. Clients coming for mediation make their own decisions. The mediator can not and will not decide for them, nor tell them what they should or should not do. The mediator may, however, furnish factual information to help the parties resolve an issue, and will assist the spouses in reaching an agreement according to their needs and financial resources.
- d. Clients in mediation are discouraged from seeking advice from friends, relatives or others whose advice may not be in their best interests.
- e. The mediator does not give specific legal advice nor perform legal services. Since our attorney-mediators are experienced divorce attorneys, they will advise both parties of the general legal principles applicable in the State of New York as those issues are mediated. However, they do not act as either party's attorney during the mediation process. If necessary, the persons may obtain legal counsel at any time.

If other specialized information is needed, consultants such as appraisers, accountants or budget counselors may be contacted in such a way as to allow both persons access to the information at the same time.

- f. With the exception of calls to change appointments, all communication with the mediator shall be within a mediation session in the presence of both persons engaged in that mediation.

2. Mediation Situations

Mediation may be used in any of the following situations:

- a. When one or both people in a marriage decide to live separately, but are undecided about divorce;
- b. When the persons are planning to divorce;
- c. When the persons are already divorced and need to revise some part of the divorce decree;
- d. In the event of future disputes;
- e. In arriving at a premarital agreement;
- f. In arriving at an arrangement regarding children.

3. Mediation Structure

- a. After an orientation session, clients usually come for mediation at least once a week. Sessions are usually 90 minutes in length, unless otherwise agreed upon by both parties and the mediator.
- b. Mediation is conducted by one mediator.
- c. The mediator is responsible for determining the order in which the issues in mediation are discussed and/or deciding whether an issue is opened or closed.
- d. If either spouse decides to cancel a mediation appointment, that spouse shall notify the mediator and the other client not later than 24 hours in advance of the scheduled mediation session. Otherwise the mediator

shall be entitled to full payment for the missed session.

4. Subject of Mediation

In Mediation, the clients decide four main settlement areas: parenting arrangements (including custody) for minor children; division of marital property; spousal support and child support. The tax consequences of these decisions will also be considered and should be reviewed by tax experts.

a. Parenting Arrangements and Custody

- Living/"visitation"/weekly schedule arrangements
- Decision making
- Holidays, birthdays, vacations
- Joint/split/sole custody

b. Divisions of marital Property

- Division of Real Estate - such as ownership, use of or sale of:
 - Family residence
 - Business property
 - Vacation property
 - Investment property
- Division of other property - such as:
 - Furniture
 - Stocks, bonds or other securities
 - Savings and bank accounts
 - Automobiles, boats and other vehicles
 - Contract options
 - Life Insurance
 - Pensions
 - Business and professional practices and assets
- Division of debts and liabilities - such as:
 - Loans
 - Charge accounts
 - Mortgages
- Tax considerations

- c. Spousal Support
 - Type and duration of payments
 - Life Insurance

- d. Child Support
 - Periodic payments
 - College education
 - Medical and dental care
 - Hospitalization Insurance
 - Life Insurance

5. Parenting Guidelines (including custody)

There are a number of factors that the parents shall consider in deciding on their parenting plan for minor children. However, regardless of the form the parents choose, it is important that they establish a cooperative parenting arrangement so that they may exercise their continuing responsibilities to their child(ren). The factors to be considered include but are not limited to the following:

- a. Each child needs both parents and has a right to a continuing relationship with both.
- b. Each child has certain needs and interests which may be important to his or her continued well-being.
- c. The child's best interests may be significantly affected by his or her interaction with parents, brothers and sisters, grandparents, or others.
- d. The child's adjustment to home, school and community.
- e. Each parent's wishes concerning custody.
- f. The concerns of each child regarding living arrangements.
- g. However, the conduct of either parent in his or her personal life which does not affect his or her relationship with the child is not a factor.
- h. The parents shall consider living arrangements as separate from the legal

designation of custody. There are as many possible options for living arrangements as there are families. Parents will decide such things as weekly schedules, holiday schedules, vacations, child care, etc.

i. In addition to a parenting plan, there are several options for legal custody. These options are:

- : Joint Custody: Joint custodial parents agree to share the responsibility in determining the child(ren)'s upbringing, including education, health care and religious training, and determining where the child(ren) live(s). This can vary from equal time with each parent to one parent providing the primary residence. Sharing the responsibility means sharing the decision-making around these issues. Please note that in New York, a Court will not generally provide for joint custody in a Judgment of Divorce unless both parents request it.
- : Sole Custody/Visitation: The custodial parent may determine the child's upbringing, including education, health care and religious training, unless the parents agree otherwise. The non-custodial parent has a right and a responsibility to reasonable time spent with the child(ren), the schedule arrived at in mediation unless they mutually decide upon a change.
- : Split Custody/Visitation: In split custody, each parent has primary responsibility for certain of the children and not for the remaining child(ren). Each may determine the upbringing, including education, health care and religious training of the child(ren) in his or her custody. Each parent maintains the rights and responsibilities of parenthood, including "visitation", to the child(ren) not in his/her custody.

6. Guidelines for the Division of Marital Property

The mediator will assist the parties dissolving a marriage in reaching an agreement concerning the division of marital property. This shall be without regard to marital misconduct. The parties will arrive at a fair and equitable division after considering all relevant factors, including the following:

- : Marital property is all property acquired by either person during the marriage, but prior to the institution of a divorce action or the signing of a separation agreement, with the exception of the following:
 - (1) Property acquired by gift or inheritance;
 - (2) Property acquired in exchange for gifts or inheritance;

- (3) Proceeds of negligence actions or Workers' Compensation Awards;
- (4) Property which the spouses agree to exclude.

- : The situation may arise in which property determined to be non- marital by one of the above exceptions or property acquired before the marriage has increased in value during the marriage due to active ownership by either person. In that event, the portion of the increase due to that active ownership is considered to be marital property. **Active** and **passive** ownership are defined as follows:
 - : Active ownership means such actions as making capital improvements, usage management, and other efforts intended to enhance the value of the property.
 - : Passive ownership means that the owner and/or spouse or person merely had possession of the property, but made no attempts to enhance the value. A classic example would be where one party owned \$10,000 of IBM stock prior to the marriage which is now worth \$50,000, due solely to stock market increases in the value of the IBM stock over the years.
- : If either person's primary role in the marital partnership was as financial provider or homemaker, such a "division of labor" does not entitle either person to a greater or lesser portion of the marital property and the subsequent division shall be an equitable one.
- : If property fits the definitions given in sections 6a & 6b, it is marital property, regardless of how it is titled.
- : The division of marital property may be affected by the economic circumstances of each person at the time of division. An example would be the retention of the family home by one person or the right to live there for a reasonable period of time in order to provide living space to the children.
- : The value of marital property shall be ascertained as accurately as possible. This value shall be determined (for the purposes of this section) as of the date of the first mediation session, following the orientation.
- : If property that has been determined to be the sole property of either person has increased or decreased in value during the marriage, or has been depleted for marital purposes, then this may also be considered.

7. **Spousal Support**

Each party completes detailed budget forms and financial statements. This information is used by the parties to determine support needs and ability to pay. Other factors to be considered are:

- a. : The financial resources of the person seeking support, including ownership of property and the ability to meet needs independently.
- b. The limitation or inability to maintain outside employment due to having primary care taking responsibilities for one or more children.
- c. The need for further training or education.
- d. The standard of living established during the marriage with the understanding that it costs more to operate two households than it does to run one.
- e. The length of the marriage.
- f. The age and physical and emotional condition of each person.
- g. The economic situation of the person who will pay support.

8. **Child Support Guidelines**

The support of their child(ren) is the responsibility of both parents. Except where the use of same would be unjust or inappropriate, child support is usually based upon the State's Child Support Guidelines.

9. **Full Disclosure**

Each client shall furnish a complete accounting of their financial situation to each other and the mediator. This will include:

- a. A monthly expense budget outlining his or her own needs and those of the children.
- b. A financial information and income statement. This shows a listing of assets and liabilities plus income based on wages, interest, dividends, etc.
- c. Income Tax Returns for the previous two years.

- d. Written evaluations of marital property, bank statements, cancelled checks, records of stock transaction or other pertinent documents requested by the mediator.
- e. The clients agree to include a clause in their settlement agreement indicating they have each made full financial disclosure in the mediation process.

10. Confidentiality of Mediation

By undertaking these rules, the mediator and clients mutually agree with one another as follows:

- a. Mediation is a procedure for reaching settlement of a dispute between the parties, either in litigation or potentially in litigation.
- b. All communication between the parties and the mediator relating to the dispute shall come within the purview of the rules of evidence. These rules prohibit either client from introducing into evidence against the other, information disclosed with a view toward settlement.
- c. The parties shall be prohibited through their adoption of these rules from calling either the mediator or any agent thereof as a witness in litigation of any description, in which they are called upon to testify as to any matter regarding the mediation proceeding. The clients will also be prohibited from requiring the production in Court of any records, documents or tape recordings made by the mediator.

11. Transfer of Property During Mediation

The parties agree not to transfer nor dispose of any real or personal property (if property is an issue to be discussed), without prior notice to each other, unless in the normal course of business or for the necessities of life. During mediation, one person may wish to propose a transfer of personal property. If this transfer will affect ten (10) percent or more of the total of his or her assets, there must be written consent obtained from the other person at least ten (10) days in advance of the proposed transaction. Transactions in violation of this rule shall be voidable and shall be set aside if the injured party makes application to a Court of competent jurisdiction.

12. Attendance at Mediation Sessions

The parties shall arrange their business and personal affairs so as to provide for attending mediation sessions once each week.

13. Interpretation and Application of the Rules

The mediator will interpret and apply these rules, after having fully explained their use to the parties.

Published as a service to our clients by the law firm of

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