

Free Ebook



Benefits of Using Mediation When Going Through a Divorce

Hirsch Legal, LLC serves clients in New Haven and upper Fairfield County, Connecticut in the areas of family law and divorce matters. We utilize negotiation, mediation, and collaborative law methods to reach your goals efficiently and cost effectively. Contact us to schedule your initial meeting:
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Hirsch Legal, LLC

Fun Fact!

CONFLICT IS GOOD

Conflict identifies areas that need work and improvement in relationships, which is always a good thing for growth!



Yes, even during divorce!

Most conflict arises because of lack of communication, lack of understanding, lack of compassion, and a failure to see the bigger picture. Person one committed a harm (perhaps intentionally, perhaps unintentionally); person two felt harmed and retaliated. It's a never ending cycle.

When conflict is met with more conflict, that energy escalates. What could have been resolved via a productive and thoughtful conversation can quickly turn into a legal battle costing lots of time, stress, and money.

At our firm, we work as a team with our clients to determine the best route possible to achieve identified aims for each unique circumstance. Whether utilizing us for mediation, collaborative, review counsel/legal coach, or litigation services, we will guide you each step of the way!

TACTICS
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DISCUSS
CHECKLIST
RESOLUTION
DISAGREEMENT
PROJECT
PREP

NEGOTIATION



PROBLEM SOLVING

“ ... IN A PEACEFUL WAY ”

Conflict is inevitable, and that's not necessarily a bad thing. We're all living our own personal truths on this merry-go-round called life, with our own distinct personalities, and ideas, and missions, and sometimes our life paths will intersect in unfavorable ways. Conflict can be helpful at times - leading to breakthroughs in relationships, helping to identify weak spots that need re-evaluating and perfecting in business as well as personal affairs.

The key is not to avoid conflict, neither to inflate it, but rather to address it each time it arises in a constructive, peaceful, manner so that you can move on.

Like the message of the Great Seal of the United States of America, our objective is to help you look for peaceable solutions to problem solving first, but be ready to fight when necessary!

Contact us to discuss the options that would best suit your situation.

THE MEDIATION PROCESS

Going through a divorce is emotionally draining, expensive, and time consuming. The dissolution of one's marriage brings with it the uprooting of one's routine, the splitting up of finances and property, and sharing time with one's children. When faced with reliving the intimate details of marriage in a public courtroom, many parties decide to seek alternative methods of dispute resolution instead.

Mediation is a successful form of alternative dispute resolution (ADR) that has gained popularity in family and divorce court cases over the last two decades. During mediation, a third party neutral, called a mediator, analyzes the assets/debts/income/expenses of the marital estate and the respective positions of the parties to assist the parties in resolving all issues necessary to proceed to judgment.

The parties can have attorneys present in the mediation session. Sometimes it's better to caucus with attorneys present so to give each side the opportunity to discuss with their counsel confidentially negotiating points and counterpoints.

In successful mediations, the parties work with the mediator to craft a *Separation Agreement* that will be incorporated into the divorce decree and enforceable by court order. The mediator does not make any decisions on behalf of the parties. Any settlement reached results from both parties reaching consensus on terms.

Mediation offers several benefits to parties, including reducing legal expenses; taking less time than traditional litigation; and minimizing the emotional toll the divorce process takes on you and the ones you love.

Another benefit is the end result is determined by you and your spouse, not a Judge who has no stake in the matter. Many parties report feeling unsatisfied and disappointed after receiving a Judge's decision, having spent tens of thousands of dollars and several months preparing for trial, and days to weeks of a trial with witness testimony and evidence sharing all your personal and intimate information in a public forum.

In contrast, mediation sessions are confidential and also take place in a much more relaxed environment than a trial does. Generally mediations are held at the mediator's office or some other neutral location.

When you take part in the creation of your own Separation Agreement, you know what is expected of you and you are more likely to follow it. You can also be certain that your concerns have been addressed, since you would have disclosed these during the mediation process. Court orders are often enforceable by fines and in the extreme jail time, so it is vital that parties fulfill each term listed in the Separation Agreement.

Mediation is truly a collaborative effort on the part of the parties, their attorneys, and the mediator, in dissolving the marital estate and defining parenting access plans that fit the unique circumstances of each matter.



5 Tips To Prepare for Divorce Mediation

It's a long and difficult road leading up to making the decision to divorce. Once that decision is made, you'll want to have a plan in place that ensures you can address all the factors necessary to dissolve your marriage and help you move onto the next chapter of your life in the smoothest way possible.

Mediation services can help!

✓ Agree on Mediation:

Divorce mediation is a voluntary process in Connecticut as well as in most states. The only way you're going to be able to place all items relevant to dissolving your marriage on the table is to first agree that you'll be coming to the table in good faith. Does that mean that you and your spouse have to be on buddy-buddy terms in order to mediate effectively? No. But it does mean that you should have a meaningful conversation about it.

Discuss it outside of the presence of children; whether it's in person at a coffee shop, on the telephone, via text, or through email, the first step is to agree to voluntarily and wholeheartedly participate in divorce mediation. Strong-arming your spouse into the process might get him/her to the table, but the mediation will not be effective and you'll end up wasting time and money.

Both parties need to want to be there. Going over the pros and cons of utilizing divorce mediation as opposed to other methods, and deciding on it as a course of action, will ensure the mediation process will be effective. In those initial conversations, you'll also want to talk about logistics. Will you split the fees for mediation? If your mediator will not assist you with the court filings, who will be responsible for that? What dates/times per month can you commit to mediation sessions? Knowing the logistics upfront will help later.

✓ Do Your Homework

Now that divorce mediation is the plan you and your spouse have chosen to move you forward and through the divorce process, you have to get organized. The mediator can't help you figure out what to do with what you have if you don't know what you have. Make lists!

To ensure you cover everything in mediation, you should have a master list containing all relevant items regardless of whether an item is thought to be yours or your spouse's. The master list should include all items of real property (house, rental properties, vacation homes) personal property (books, DVD's, furniture, artwork, jewelry), vehicles (including boats, wave runners, motorcycles, ATV's), bank accounts (joint and separate, checking, savings), credit cards, retirement accounts, life insurance policies, annuities, stocks, bonds, other financial products, and anything else that exists.

You'll also want to gather all sources of income – paystubs, profit and loss statements from self-employment, pension disbursements, social security, alimony and child support payments received. As for expenses, you'll want to list out recurring expenses as well as ongoing liabilities, so that all mortgage payments, car loans, health insurance costs, food, utilities, student loans, credit card payments, etc., are clearly indicated.

Connecticut, as well as most state courts, requires a Financial Affidavit to be submitted during the dissolution process. Be sure to check your local rules or consult with an attorney who can assist you. Ensuring your Financial Affidavit is completed accurately is paramount, as that information can be held against you later. Doing a rough draft early on in the information gathering process will help you work out all the errors at the outset so that your final version will be error free, and it also serves as a roadmap of financial factors to cover during mediation.



✓ **Goal Setting:**

Once you know what you have, the next step is to figure out what you want to do with it. This process can sometimes be difficult.

Considerable time should be spent trying to determine what's truly important to you and what you can live without. Making lists here will help as well.

Just like in traditional negotiations, you'll need to figure out your range of acceptable terms – everything you hope to have at your top line, and what you absolutely will not walk away without at your bottom line. In between those two extremes are variables that can shift depending on how the negotiations proceed.

If you have children, make sure you keep the parenting access decisions separate from the financial decisions, and do not use one to influence your position on the other.

Also, draft your budget as it currently stands and draft a projection of what your budget will look like post-divorce. This will help you get a sense of your current financial picture and what you'll need going forward.

Think about what your goals are, the pros and cons of each, and the alternatives as well, so you have a good idea what you are and aren't willing to compromise on. The more prepared you are before mediation starts, the more productive your mediation will be.

But remember to stay flexible during the process. You'll be surprised how often what you thought you wanted early on changes over time.

✓ **Think About Your Kids Needs Before Your Own:**

Children are resilient, but divorce is hard on kids. You can help your children cope with divorce by minimizing the negative impact it has on them. Regardless of your children's age, you need to communicate about what's happening as this process affects their lives too. Agree as parents to talk to your kids together. Agree on how it will be done, where it will be done, and what you will say.

Present a united front and try to answer their questions as best as possible, without divulging unnecessary adult information. Kids are smart, they probably already know something's up. They deserve to hear from their parents that they will continue to be loved and supported and that everything will be ok.

Though your marriage is dissolving, your role as parents will continue on. Be patient with your children throughout the process, as their emotional reactions will vary. Do your best to provide a stable, positive, loving environment, and together explain whenever a change in routine or living arrangement is to occur.

Do not disparage the other parent or talk about adult business within earshot of your children. You have to find a way to co-parent that supports and serves your kids' best interests.

When discussing issues concerning children and parenting access time, think about where your kids will spend most of their time – where they go to school, where they take dance and karate and other extracurriculars, who will bring them where, if any special needs are to be considered and how those will be cared for going forward, how will private school and college costs be covered, where they will spend birthdays, holidays, and special occasions.

Remember that even though your children may be small today, as your children's lives change over the years so too will your role as parents. You may have to consult with each other on important life decisions like medical needs, or see each other at important life milestones like graduations, weddings, and the birth of your grandchildren. Learning to effectively co-parent early on will help you years down the road.

Most states require parents in divorce, custody and visitation matters (whether contested or uncontested) to attend co-parenting education courses prior to judgment entering. Check your local rules or consult with an attorney to determine what your state's requirements are.

Mediators who have been trained in family mediation can help parties build effective communication skills and conflict resolution skills during their sessions so that post-mediation, parents can work with each other and effectively co-parent into the future.

✓ **Research Mediators Before You Hire:**

Mediation as an alternative to litigation or other form of dispute resolution has gained tremendous popularity over the last decade, but until then it was sort of taboo. You see, the legal arena was inherently adversarial in nature. There was once the viewpoint that the first party in an action to raise mediation or some other form of alternative dispute resolution to resolve a case was tantamount to admitting their position was weaker and really just afraid they might not prevail at trial. So parties held back on raising a mode of resolution as an option until a Judge suggested the two sides talk.

We've come a long way since then. Over time people have recognized the many benefits of mediation, and it and other forms of alternative dispute resolution are now frequently used to resolve matters even prior to the filing of a lawsuit.

With the demand for mediation growing, more and more individuals, organizations and firms began offering mediation services. Some states do regulate and have procedures for being trained in mediation and certified in different issue areas, but not all. So, buyer beware. This is a service you're purchasing just like any other – do your due diligence.

Whether your prospective mediator is also an attorney, someone with a Ph.D., a J.D., a LLM, or has any number of other alphabet soup credentials after his/her name, don't rest on that alone. Ask questions about their training and experience and research their credentials so you can make an informed choice.