

## Mediation FAQs

### What is mediation?

Mediation is a calm, civil, private — and usually less expensive — way to work out agreements. In mediation you have the chance to make customized agreements that reflect your unique needs and values, based on full disclosure, in a private, safe and confidential setting — without any pressure. And in mediation, courtroom procedure can be relaxed so you can tell your story, and make your agreements, your way.

### What are the steps in mediation?

Mediation typically has three steps, which you can move through at whatever pace best suits you.

- Step One: The mediator should first learn about you — what your concerns are, any goals you have for the process, as well as any ground rules you wish for both of you to observe while you are in mediation. This is where the mediator should simply listen to you. The mediator should also learn about your children, if you have children: things like each child's academic, social and developmental level and progress. Finally, the mediator should help you identify and gather the legal and financial documents and other information you'll need, so later on you'll be prepared to make choices that best fit you.
- Step Two: Next, the mediator should help you identify the specific topics that you'll need to resolve, and set the course to resolve them, one at a time — in a structured and safe setting — and at whatever pace best suits you. If the mediator is also an attorney, this is when — if he or she is willing to do so — the mediator can help you understand the law and what a court might do in situations like yours, providing you with guidance for resolving each topic. And if your mediator is also a mental health professional, he or she will likely have the skills and tools to help you keep things calm, be heard, and reach agreements.

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- Step Three: Last, once you are comfortable with all aspects of your agreement, the necessary legal documents are drafted and filed with the court. If your mediator is also an attorney, he or she can take care of most of this for you, if you choose, which is typical in this area. Or you can do this yourself, or have someone else do this if you prefer. And once a Judge approves your agreement, it is official and legally binding, just as in court-litigated cases.

### **Why choose mediation?**

There are lots of reasons so many people choose mediation. First, in mediation, you get to keep control of the key decisions affecting your family, money and life, rather than surrendering them to lawyers or a court. Second, you aren't set up as enemies against each other, but instead as two people with some problems to resolve. Third, mediation allows you to avoid prolonged, and often expensive, court proceedings. Fourth, unlike public court, what happens in the mediation room is usually confidential and private. Fifth, an experienced mediator should be able to keep things fair, and not allow undue pressure, strong-arming or coercive tactics. And sixth and finally, mediation is often less expensive.

### **Are mediated agreements enforceable?**

Yes, once approved by a Judge. When you have agreement on all points, an attorney can draft your legal agreement, as well as the related court documents. If your mediator is also an attorney, he or she can usually take care of this step for you, which is typical in this area. And in Connecticut, once a Judge approves your agreement and related documents, it is as official, legally binding, and enforceable as it would be litigation. It's typically this last step that makes your agreement an enforceable court order.

### **Will my mediated agreement be observed in the future?**

Research shows that mediated agreements are most often observed, and at a higher rate than litigated cases. Also, if you have taken your agreement to court and had it approved by a Judge (which is typical in Connecticut), and if for some reason it is not being observed in the future, you have the full array of court remedies available to you to compel the other person to observe it, just as you would in litigation.

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### **Do I need a lawyer of my own in mediation?**

It's typically not required, so it's usually your choice. Ask any mediator you are considering working with if he or she requires this (I don't, and instead let clients choose whether or not they need them). If your mediator is also an attorney, he or she can help both of you understand the law, what a court might do in situations like yours, and draft your legal agreement and related court documents. If you like, you can also have an outside attorney of your own coach/advice you individually, read through and provide you with individual feedback on the legal documents before you sign them, draft your legal agreement and related court documents, or work with you in any other way you find helpful. For clients who wish to work with outside professionals, I typically offer referrals so they can find someone best suited to meet their needs.

### **Can we mediate if one of us has filed court papers or hired a lawyer?**

Yes. You can still use mediation, regardless of where you are in the process: just sorting it out, have or have not filed papers, have or have not hired a lawyer, or have been using attorneys in litigation.

### **Can we mediate if we don't get along well?**

Most often, yes. You don't have to be on very friendly terms to mediate. Experienced mediators — especially those with mental health degrees — can help people work out agreements, even when they're still upset with each other. So, as long as each of you is willing to 'come to the mediation table' and be somewhat reasonable, and your mediator has the necessary training and experience, you can most often mediate.

### **Can we mediate if I don't trust my partner to disclose everything?**

In Connecticut, mediated divorces must use the same sworn financial disclosure documentation — called Financial Affidavits — that courts require in litigation. Each client must fill out his or her own Financial Affidavit to the best of their ability. Intentionally misrepresenting information on a Financial Affidavit can result in criminal charges. So this usually goes a long way to impress upon each client the benefits of full disclosure. In addition, if you like, in mediation you can use many of the same disclosure tools used in litigation, such as interrogatories, depositions and professional valuations, to get the level of disclosure that makes you comfortable, though this is not required.

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### **Can we mediate if I don't understand finances that well?**

An experienced mediator should take the steps necessary to make sure that each of you grasps your overall financial picture before you make any agreements. And if you wish, you can use a financial, legal or other advisor of your own during mediation to be doubly-sure that you are absolutely clear about your financial picture. For clients who wish to work with outside professionals, I typically offer referrals so they can find someone best suited to meet their needs.

### **Do mediators take sides?**

A mediator works for both of you. So he or she should never take sides with one of you against the other. An experienced, well-trained mediator should know how to work with both of you without taking sides against one of you.

### **How long does mediation usually take?**

Only as much time as you need. That's because mediation is a completely transparent process — you should always know exactly what you've worked on so far, what you are working on currently, and what is left to do. Also, you direct how much or little time you take to work on any one topic. And when you're done, you're done: once you've resolved all topics and finalized your divorce with the court, mediation is complete.

### **How should I choose a mediator?**

Ask questions. Here are a few important ones:

- How many divorce mediations have you done? Over what time period have you done them?
- What percentage of your practice is dedicated to divorce mediation?
- Why did you become a mediator?
- What formal mediation/dispute resolution training have you received, besides a basic 40-hour introductory workshop?
- Do you typically offer clients the option of your going to court with them to present their agreement to a Judge, or do you typically require them to go alone? Why?

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- What mediation/dispute resolution professional associations do you belong to? Are you a general member (lowest level of experience) or a practitioner/advanced member (highest level of experience)?
- Are you an 'evaluative' mediator, who will offer us information on the law, what a court might do in situations like ours, and help us with possible solutions, or are you a 'facilitative' mediator, who typically will not offer this evaluative information? Why?
- What is your specific theory/approach on how to best resolve disputes? How did you develop this?
- If we get stuck, what would your approach be?
- What does your typical mediation process entail? How do you typically organize the process and what are the specific steps in your process?
- How many meetings might it take if our case is very short and straightforward, and how many meetings might it take if things are more complicated? What specifically, in your opinion, causes a mediation to be shorter or longer and how did you learn this?
- What is your profession of origin (law, mental health, finance, other)?
- Do you typically require clients to hire professionals in addition to yourself in mediation, such as outside attorneys, financial professionals, and parenting coordinators, or do you let clients choose whether or not they need them? How did you come to this?
- Do you offer a consultation meeting free of charge before we start mediation so that we can meet you, ask questions of you, be in your mediation room, and understand how you work?

Also, it's really important to use a mediator with whom you both feel comfortable, since mediation is such a personal service. This is sometimes called the 'click.' You can usually find this out during a consultation meeting, before the mediation itself begins.

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