



# Divorce Mediation in New York

A practical guide to understanding mediation as an alternative to litigation.

## 1. — What Is Divorce Mediation?

Divorce mediation is a structured negotiation process in which a neutral third party—the mediator—helps a divorcing couple reach agreement on the terms of their divorce. Unlike litigation, where a judge imposes a decision, mediation empowers both spouses to control the outcome.

### How It Works:

- The mediator meets with both spouses (together or separately) to understand their interests and concerns.
- The mediator helps identify common ground and explores creative solutions.
- Each spouse may consult with their own attorney for legal advice (though not mandatory).
- The goal is to reach a written settlement agreement on property, custody, support, and other issues.

**The Mediator's Role:** The mediator is *neutral*—they do not represent either party and have no authority to decide disputes. Their job is to facilitate communication, help both parties understand each other's needs, and move toward mutually acceptable solutions.

## 2. — Mediation vs. Litigation

Factor	Mediation vs. Litigation
<b>Cost</b>	Mediation is typically 30–50% less expensive than litigation. You pay the mediator's hourly fee (often split equally) rather than two opposing attorneys fighting discovery battles and court appearances.
<b>Timeline</b>	Mediation can be completed in weeks to months. Litigation averages 12–24+ months from filing to final judgment, depending on court dockets and complexity.
<b>Privacy</b>	Mediation is confidential; settlements are private agreements. Litigation is public; trial transcripts and court records are accessible to anyone.
<b>Control</b>	In mediation, you and your spouse design the agreement. In litigation, a judge decides—often with neither party fully satisfied.
<b>Tone</b>	Mediation is collaborative and forward-looking. Litigation is adversarial; parties prepare to 'win' and may heighten conflict.



**Court Involvement**

Mediation uses court only for filing the final agreement. Litigation requires extensive court involvement: discovery disputes, motions, possible trial.

### 3. — The Mediation Process Step by Step

Stage	What Happens
<b>Session 1: Opening &amp; Agenda</b>	Mediator explains the process, reviews ground rules (confidentiality, good faith), and helps each spouse state their goals and priorities. Financial disclosure begins.
<b>Session 2: Information Gathering</b>	Financial documents (tax returns, bank statements, property deeds, insurance, pensions) are exchanged and reviewed. Spouse concerns about children, support, property division are detailed.
<b>Sessions 3–4: Negotiation &amp; Options</b>	Mediator presents options: property division scenarios, custody/parenting plans, support calculations. Spouses discuss trade-offs and preferences in shuttle sessions if needed.
<b>Session 5+: Refinement &amp; Agreement</b>	Terms are refined; mediator drafts settlement language for review. Spouses consult their attorneys (or mediator suggests legal review) to ensure fairness and compliance with NY law.
<b>Final: Signature &amp; Filing</b>	Both spouses sign the settlement agreement. Attorneys or the mediator prepare papers for court filing; judgment is entered uncontested.

### 4. — Rules of Mediation

At the outset of mediation, both parties agree to abide by the following ground rules. These rules protect the integrity of the process and help ensure that mediation is productive, respectful, and effective.

1. We agree to take turns speaking and not interrupt each other.
2. We agree to call each other by our first names, not "he" or "she."
3. We agree to not blame, attack, or engage in put-downs and will ask questions of each other for the purposes of gaining clarity and understanding.
4. We agree to stay away from establishing hard positions and express ourselves in terms of our personal needs and interests and the outcomes that we wish to realize.
5. We agree to listen respectfully and sincerely try to understand the other person's needs and interests.
6. We recognize that, even if we do not agree with it, each of us is entitled to our own perspective.
7. We will not dwell on things that did not work in the past, but instead will focus on the future we would like to create.



8. We agree to make a conscious, sincere effort to refrain from unproductive arguing, venting, or narration, and agree to use our time in mediation to work toward what we perceive to be our fairest and most constructive agreement possible.
9. We will speak up if something is not working for us in mediation.
10. We will request a break when we need to.
11. While in mediation, we will refrain from adversarial legal proceedings (except in the case of an emergency necessitating such action).
12. We will point out if we feel the mediator is not being impartial as to person and neutral as to result.

## 5. — What Can Be Mediated?

In New York, virtually *everything* in a divorce can be mediated:

- Property Division: How marital assets (home, retirement accounts, investments, vehicles) and debts (mortgages, credit cards, loans) are split.
- Spousal Support (Alimony): Duration, amount, and structure of payments from one spouse to the other.
- Child Custody & Visitation: Legal custody (decision-making), physical custody (where children live), and holiday/summer schedules.
- Child Support: Calculation based on both parents' incomes, special needs, and custody arrangement.
- Name Changes: Whether either spouse wishes to change their name upon divorce.
- Tax Issues: Who claims children as dependents, who gets the home sale exemption, and filing status for the divorce year.

If mediation produces agreement on all issues, the divorce is uncontested and can be finalized quickly and inexpensively.

## 6. — Is Mediation Right for You?

### Good Candidates for Mediation

- Both spouses are willing to negotiate in good faith.
- Neither party fears the other or feels coerced.
- Both have roughly equal financial knowledge or can educate themselves.
- You want to minimize cost and preserve civility (important for co-parenting).
- You prefer privacy and want to avoid a public trial.
- Neither party has hidden assets or is trying to conceal income.



### **Mediation May Not Work If:**

**Domestic Violence:** History of abuse, threats, or physical violence makes true negotiation unsafe.

**Severe Power Imbalance:** One spouse is highly educated/sophisticated and the other is vulnerable or isolated.

**Hidden Assets:** One party suspects the other is hiding income, businesses, or property.

**Untreated Mental Illness or Substance Abuse:** If a party cannot engage rationally or truthfully.

**Unwillingness to Negotiate:** If one spouse has already decided to 'win' via litigation, mediation is unlikely to work.

**Highly Complex Estate:** Businesses, international assets, or trusts may need specialized input that mediation cannot provide.

## **7. — How a Mediator-Attorney Is Different**

Attorney Pieter Weinrieb is a **CERTIFIED MEDIATOR**—one of very few family law attorneys in Western New York who holds both litigation and mediation credentials. This dual qualification offers unique advantages:

- **Keeps Parties Legally Informed:** During mediation, Pieter explains how New York law affects proposed agreements (e.g., equitable distribution, maintenance formulas, best-interests factors). Both parties understand the legal implications before signing.
- **Prevents Bad Deals:** Because Pieter understands family law deeply, he can alert parties to terms that might be unfair or unenforceable, saving them regret later.
- **Flexibility:** If mediation stalls or parties cannot agree, Pieter can transition to litigation representation—you have continuity and someone who knows your case fully.
- **Credibility:** As both mediator and litigator, Pieter brings credibility; parties trust that advice is grounded in experience and legal knowledge, not just feel-good mediation philosophy.

**Important:** When serving as mediator, Pieter does not represent either spouse and cannot advise one party over the other. However, he ensures both parties understand New York law and the enforceability of any agreement.

## **8. — Frequently Asked Questions**

### **How much does mediation cost?**

Mediators typically charge \$200–\$400 per hour. If mediation takes 10 hours and costs are split equally, each party pays \$1,000–\$2,000. This is far less than litigation, where each attorney may bill \$10,000–\$50,000+ before a case concludes.

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

Most divorces can be mediated in 4–10 sessions over 2–4 months. Complex estates or custody disputes may require more sessions. Litigation can take 12–24+ months.

### **What if we disagree on one issue?**

Mediation doesn't require 100% agreement. If parties agree on 90% of issues, mediation can resolve those; the remaining item can go to court or to neutral evaluation. Many cases settle the 'last 10%' faster after mediation creates momentum.



**Is a mediated agreement legally binding?**

Yes, if both spouses sign the settlement agreement, it is binding and enforceable in court. You can include clauses for modification under specific circumstances (e.g., if a child's needs change significantly).

**Do we still need attorneys?**

Not mandatory, but strongly advised. Each spouse should have their own attorney review the draft agreement before signing to ensure it's fair and complies with New York law. This protects both parties and helps the judge approve the agreement quickly.

**Can we do 'shuttle mediation' if we can't be in the same room?**

Yes. If parties have safety concerns or high conflict, the mediator can meet with each separately, conveying proposals and counteroffers. This is still mediation—parties retain control, but communication is filtered for safety.

**What if mediation fails?**

Either party can exit mediation and begin litigation. Nothing said in mediation can be used in court (mediation is confidential), so you lose no legal rights by trying mediation first.

**Do children have a voice in mediation?**

Children do not participate in mediation sessions. However, mediators help parents focus on the children's best interests and can discuss parenting plans that reflect the children's needs and preferences (especially for teenagers).

**Ready to speak with an attorney?**

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