



SEPARATION / DIVORCE WITH MINOR CHILDREN

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Mediating a Separation or Divorce

Regardless of who initiates the conversation to separate or divorce, the process can be daunting to say the least. As you wrestle with the emotional and financial effects of a separation or divorce, sadness, fear, and anxiety, can be paralyzing or can often initiate a knee jerk reaction. It is rare for both spouses to come to a decision to separate or divorce at the same time; more often than not, one spouse is not ready to end the marriage. Once one of you have made the decision or have come to the realization that it is really going to happen, the business of how to move forward can be overwhelming.

Legal separation? Divorce? What are my options? What do I do next? Can I afford this? How will I survive financially?

Most people think they have two choices when it comes to negotiating a separation/divorce: (1) Hire an attorney so that they can ‘win’ in the divorce arena or (2) Not hire an attorney and go through the divorce process without legal counsel. Couples who have children, marital assets or who have been married for a significant period, think that they must hire an attorney to figure out how to define how they will co-parent their children, divide up assets/debts or determine whether child or spousal support should be paid, or will be paid. That simply is not true.

For some this may be the only way forward, but it is not the only way. You have other options.

Mediation leaves the power and authority and decision making strictly with you. The mediator does not decide what is "fair" or "right." Mediation gives each spouse the opportunity to express their needs and desires in a safe, neutral environment with a trained professional. Each party determines parenting and financial decisions that are right for you and your family moving forward. No one is making those decisions for you.

We all have heard divorce horror stories. Let’s look some of the differences in a contentious or litigated separation or divorce vs. that of a separation or divorce that is negotiated through mediation:

- **Costs** – It is estimated that a mediated agreement is at least 25-40% of the cost of an adversarial or litigated separation or divorce.
- **Time** – You determine the pace of your mediation, depending on your circumstance decisions can be made in 3-4 sessions or less, 1-2 hours each.
- **Gentler, Less Contentious** – The focus in mediation is cooperation vs. conflict, presenting options vs. someone dictating what you must do! You and your spouse will be encouraged to work together toward an agreement that you both can accept. ***You determine what is equitable and fair.***
- **Confidential** – It is your story, you decide what to share in a safe, structured environment vs. that of an open court room.
- **Kinder** – Mediation strives to protect the self-esteem and dignity of all parties. Rather than looking back to assign blame, the decisions you have made in mediation empowers you to look beyond today and to look to the future. You take control over the decisions that are going to affect you and your family.

At the conclusion of the mediation process, you will have a comprehensive document, detailing all your decisions called a Memorandum of Understanding (MOU); as well as your financial Statements of Net Worth (SONW) which are required by the court when filing for a divorce. The MOU defines all the agreements that you have made, the SONW is the complete disclosure of your assets and liabilities. You are now ready to have these documents reviewed and filed with the court by an attorney.

WHAT CAN I EXPECT IN MEDIATION?

General Process:

- Initial Consultation – Opportunity to hear about mediation and all options available to you and to determine if mediation is right for you. Approximately 1 hour, no obligation to proceed. (\$75)
- Separation/Divorce Mediation can usually be accomplished in 3-4 sessions, 1-2 hours each (can be more depending on your circumstances).

Areas to Resolve: Please Refer to the 'Decisions' Document in this Packet for More Specific Details

A. **Develop a Parenting Plan – If you Have Minor Children:**

Define decision making authority (Custody) and where will the child(ren) live (Residency)? Kids schedules, your responsibilities as the on-duty parent vs. the off-duty parent, their activities and associations, medical and school decisions. Discussion and intent of how you may handle certain circumstances moving forward.

B. **Division of Marital Assets and Liabilities (Debts)**

COMPLETE: Independently complete a financial workbook identifying monthly budgets) your projected expenses when your finances are no longer co-mingled), DISCLOSURE & DETAILS: Disclose income from all sources, assets including all bank accounts – checking, savings, HSA, all real estate, value of vehicles, including boats, campers etc., value of any business you own, retirement assets, stocks, digital assets, etc. , debts, mortgages, home equity line of credit, credit cards, loans - personal, bank, or student, vehicle leases, federal and state taxes, retirement, or life insurance loans. Additionally, you will need to submit supporting statements and documentation for all assets and debts.

C. **Support Decisions**

Spousal Support – Maintenance Guideline Laws & Child Support Calculations per the Child Support Standards Act (CSSA), The factors by which you can deviate from calculations.

Documentation:

- Creation of Memorandum of Understanding, (MOU), billed 3-5 hours @ your billable rate.
- Creation of Statements of Net Worth, (SONW) billed 1-2 hours, @ your billable rate.
- Review of completed MOU and SONW billed 1-2 hours, maybe less, @ your billable rate.
- MOU and SONW given to each party for attorney review, drafting of legal documentation and filing with court. MOU, SONW and all copies of financial documentation given to the mediator will be electronically sent to your attorney.

Payment Requirements:

- Billable rate is based on a sliding scale using the parties combined incomes from all sources.
- Payment is required after each session.
- Payment methods: VENMO, Apple Pay, Credit Cards, Debit, Cash or Check.

Mediation is completely voluntary! You will be asked to sign an Agreement to Mediate, this document **does not bind you to the process**. It defines Mediator credentials, fees, the role of the mediator, what you can expect from them and what is expected from you. If you agree that mediation is the right process for you – you will be expected to fully disclose all your assets and debts, and that you will work towards an equitably fair agreement; you define what is equitable and fair.

POTENTIAL DECISIONS TO BE MADE IN MEDIATION

PARENTING DECISIONS

RESIDENCY & LEGAL CUSTODY

- Joint or Sole Custody: Who Will Make Major Decisions – Both Parents?
One Parent Only?
- Shared Residency with Both Parents / Legal Address for School? Primary Residency with One Parent?

PARENTING PLAN & SCHEDULES: ON-DUTY PARENT VS. OFF-DUTY PARENT

- Weekdays
- Weekends
- Holidays and Long Weekends
- Notice re Changes in Schedule
- School Recesses
- COVID Protocols
- Birthdays – Yours and Theirs
- Missed Time with Children
- Summer Vacations
- Access to Off-duty Parent
- Other: Special Occasions
- Activities Needing Mutual Consent or Discussion

GEOGRAPHIC RESTRICTIONS

- Travel Away from Home - Out of State/Foreign Travel
- Time Away – with Children and Without
- Relocating with Children/Parental Moves – Boundaries - School District

ACCESS TO RECORDS

- Medical - Doctors, Dentists, Therapists, Specialists, etc.
- Educational - Schools and Teachers

NOTIFICATIONS

- Addresses and Phone Numbers
- Illnesses and Accidents
- Children's Whereabouts

OTHER

- Grandparents, Extended Family Visitation
- Firearms
- Religion
- Body Piercings/Tattoos
- Cell Phone – Who Provides? Expense?
- Legal Guardians – Wills
- Third Party Introductions
- Electronics - Social Media
- Discipline
- Your Alcohol/Legal Drug Use

EQUITABLE DISTRIBUTION DECISIONS

FACTORS

- Valuation Date (Date of Marriage to Current Date/Other)
- Marital Property and Separate Property

REAL ESTATE (House or Other)

- Who Occupies Until Sale?/Refinance / Other Property? Time Share?
- Who Pays Expenses Until Sale?
~ Mortgage/HELOC ~ Taxes ~ Utilities ~ Insurance ~ Repairs ~

Sale of House:

- When -- Graduation of Children, Remarriage, Co-habitation?
- Division of Proceeds
- Option to Buy
- Closing Costs
- Selling Price -- How to Determine
- Expenses Prior to Listing
- Tax Escrow & Tax Adjustments
- Net Equity Defined/Split
- Capital Gains Tax, if Applicable

Buy-out:

Who?

- Price - Fair Market Value
- Equity Payment Terms

Mortgage:

- Refinance/ HELOC/Timing
- Quit Claim Deed

RETIREMENT FUNDS - PENSIONS, 401Ks, IRAs, Stocks/Digital Assets, ETC

- Valuation
- Division of Value -- Lump Sum, Pay-Out or Both

BUSINESS & PROFESSIONAL ASSETS

- Valuation
- Student Loans
- Division of Value -- Lump Sum, Pay-Out or Both

DIVISION OF ALL OTHER ASSETS/PERSONAL PROPERTY

Cars -Titles/Registration/Insurance

- Boats/Campers/Trailers/Snowmobile
- Jewelry
- Collectibles
- Bank Accounts
- Cash Value Life Insurance Policies
- Stocks, Bonds, Tax Shelters, etc.
- Household Items
- Family Photographs
- Credit Card Points

DEBTS & LIABILITIES

- Student Loans
- Credit Cards
- Vehicle/Lease Loans – Name on Loan/Lease/Co-signed
- Bank Loans /Personal Loans
- 401K Loans / Pension Loans
- Life Insurance Loans
- Federal or State Income Tax

CHILDRENS PROPERTY

- NYS 529 or Other Education Accounts
- Bank Accounts
- Savings Bonds
- Vehicle Information, if applicable

SEPARATE PROPERTY

- Pre-Marital Assets/Liabilities
- Gifts/Inheritances/Other

SUPPORT DECISIONS

CHILD SUPPORT – CHILD SUPPORT STANDARDS ACT (CSSA)

- Amount - NYS Calculations
- Time of Payment
- Amount of Reduction on Emancipation or Attending College
- Child Care Expenses While Working
- Emancipation: College, Marriage, Full-Time Employment, Living Away
- Cost of Living Adjustments – Triggers for Re-Calculation
- Summer Camp/Activities
- College or Private School Tuition
- Extra-curricular Activities
- Cell Phones, Car Insurance

HEALTH INSURANCE

CHILDREN

- Who Provides Insurance?
- How Much Does it Cost to Cover the Children?
- Who pays Un-Reimbursed Expenses? Dental, Prescriptions, Glasses, Therapy, etc.
- Decisions on Elective Procedures, including IE: - , Orthodontia, etc.

SPOUSE

- Who Currently Provides Insurance?
- Legal Separation vs. Divorce (re: Insurance Coverage)
- "Cobra" Rights and Cooperation
- Health Care Exchange

LIFE INSURANCE

- Amount (to cover Child Support/Spousal Support)
- Type – Term vs. Whole life
- Beneficiary
- Trustee for Children
- Duration

MAINTENANCE/SPOUSAL SUPPORT (ALIMONY)

- Amount – NYS Guidelines
- Time of Payment
- Duration – Number of Years? Cessation – Remarriage? Cohabitation?
- Cost of Living Adjustment, Factors for Termination
- Distributive Award in Lieu of...

OTHER DECISIONS to BE MADE

INCOME TAXES

- Children – Exemptions? Tax Credits? – WHO CLAIMS? – Stimulus Payments?
- Joint or Separate Return? Division for Taxes Owed or Refunds?
- Audits of Previous Returns and Payment of Deficiency/Refunds

MISCELLANEOUS

- Payment of Legal Fees
- Legal Separation of Divorce
- Timing of Divorce
- Religious Divorce
- Beneficiaries, Title Transfers
- Wills, Health Care Proxy, Power of Attorney

FUTURE CONFLICT

- Mediation/Arbitration/Collaborative Law
- Expert Advice
- Legal Separation or Divorce

REQUIRED DOCUMENTATION

- Most Current Income Federal and State Income Tax Returns – Personal (1 Year) & or Business – (3 Years) - W2s and or 1099s
- Any Other Sources of Income
- Bank Statements – **All Accounts**
- Completed NYS Financial Workbook
- Mortgage/HELOC Statements
- List of Any Accounts Owned Prior to Marriage – Balances
- Pre-Nuptial or Post Nuptial Agreements
- Real Property – Comparative Mkt. Analysis or Appraisals, If Applicable
- Current Credit Bureau Report
- 2 – Pay Statements (Most Current) for Both Parties
- Social Security Statements, If Applicable
- Recent Pension/ Retirement Statements
- 401K/403B/457 Statements
- All Loan & Credit Card Statements
- All Brokerage/Investment Statements
- Health Insurance Information – Copy of Ins. Card – Provider and Costs for Children’s Health Insurance Premium
- Whole Life Insurance – Most Recent Statement – Cash Value? Beneficiary
- Term Life Insurance – Duration? Face Value, Beneficiary

BILL OF RIGHTS FOR CHILDREN

1. The right not to be asked to 'choose sides' between their parents,
2. The right not to be told the details of the legal proceedings going on between their parents,
3. The right not to be told 'bad' things about the other parent's personality or character,
4. The right to privacy when talking to the other parent on the telephone,
5. The right not to be 'cross examined' by one parent after spending time with the other parent,
6. The right not to be a messenger from one parent to the other,
7. The right not to be asked by one parent to tell the other parent untruths,
8. The right not to be a confidant regarding adult matters,
9. The right to express feeling, whatever those feelings may be,
10. The right to choose not to express certain feelings,
11. The right to be protected from parental 'warfare'.
12. The right to not be made to feel guilty for loving BOTH parents.

CHILD SUPPORT STANDARDS ACT - CSSA

The provisions of Domestic Relations Law Section § 240 (1-b) as it relates to child support commonly know as the Child Support Standards Act (CSSA) is used to determine an approximate annual child support obligation. For a detailed, legal explanation of all factors used by the court in calculating a child support obligation, you should consult section 413 of the Family Court Act.

Financial support for a child (ren) under the age of twenty-one is the responsibility of both parents. Basic child support provides for shelter, food clothing and other basic expenses.

Health insurance premiums, unreimbursed medical/dental expenses, childcare services when a parent is working and educational costs are add on expenses.

The 2022 poverty income guidelines amount for a single person as reported by the United States Department of Health and Human Services is \$13,590 and the 2022 self-support reserve is \$18,347.

Note: Where the total income of both parents exceeds the combined parental income amount of \$163,000 the law permits, but does not require, the use of the child support percentages in calculating the child support n calculating the child support

Child Support Percentages

One Child - 17%

Two Children - 25%

Three Children - 29%

Four Children - 31%

Five + Children - no less than 35%

CHILD SUPPORT FACTORS:

The following factors are considered in determining the amount of child support to be paid, or the factors by which you can deviate from the calculations:

- 1. The financial resources of the custodial and non-custodial parent, and those of the children;**
- 2. The physical and emotional health of the children, special needs and aptitudes;**
- 3. The standard of living the children would have enjoyed had the marriage or household not been dissolved;**
- 4. The tax consequences to the parties;**
- 5. The non-monetary contributions that the parents shall make toward the care and well-being of the children;**
- 6. The educational needs of either parent;**
- 7. Where practical and relevant, a determination that the gross income of one parent is substantially less than the other parent's gross income;**
- 8. Where practical and relevant, the needs of the children of the non-custodial parent for whom the non-custodial parent is providing support who are not subject to the instant action and whose support has not been deducted from income pursuant to subclass (b) of §240 of the Domestic Relations Law, and the financial resources of any person obligated to support such children, provided, however, that this factor may apply only if resources available to support such children are less than the resources available to support the children who are subject to the instant action;**
- 9. Provided that the child is not on public assistance (i) extraordinary expenses incurred by the non-custodial parent in exercising visitation, or (ii) expenses incurred by the non-custodial parent in extended visitation provided that the custodial parent's expenses are substantially reduced as a result thereof; and**
- 10. Any other factors, which the parties or the Court have or could, deem to be relevant.**

TERMINATION OF CHILD SUPPORT OBLIGATION

Connie Fraser Mediation LLC does not provide legal advice or counsel. Each party has been encouraged to be fully advised by their respective counsel regarding the legal, financial, and practical effect of any agreement entered into.

Both parties acknowledge and understand that child support obligations cease upon each child's attainment of any of the following events:

- **Child reaches the age of twenty-one (21) years;**
- **Child marries, even though such marriage may be void or avoidable;**
- **Permanent residence away from the residence of either parent. Residence at boarding school, camp or college is not to be deemed as residence away from the residence of either parent and, hence, such residence at a boarding school, camp or college, is not an Emancipation Event;**
- **Death;**
- **Entry into the Armed Forces of the United States or the Peace Corps or other similar service; provided, however, that upon discharge from the Armed Forces, Peace Corps or other similar service, the child shall not be regarded as emancipated unless or until another emancipation event has occurred.**
- **Engaging in full-time employment and after the attaining by the child of eighteen (18) years of age, except and providing that:**
 - **a). Engaging by the child in part-time employment shall not be deemed an Emancipation Event; however, if the child is employed part-time and is capable of full-time employment, the parties shall re-enter mediation to determine a new support schedule based on the then-existing circumstances of the child's capabilities for self-support; and b). Engaging by the child in full-time employment during vacation and summer periods only shall not be deemed an Emancipation Event.**
- **Despite anything contained in this Appendix, an Emancipation Event shall be deemed deferred beyond the twenty-first (21st) birthday of the child only if, and so long as the child pursues undergraduate college education with reasonable diligence and on a normally continuous basis, unless interrupted by good cause.**
- **College education does not include education in the evening, unless said education constitutes a full course of study normally ending in four (4) years.**
- **If, prior to Emancipation, the child chooses to reside with the non-residential parent, the child support provisions are adjusted appropriately for the new residential arrangement.**

INFORMATION RELATED TO DOMESTIC RELATIONS LAW

Connie Fraser Mediation, LLC does not provide legal advice or counsel. Each party is encouraged to be fully advised by their respective counsel regarding the legal, financial, and practical effect of any agreement entered into.

Equitable Distribution Factors: (Parties consider the following factors in determining the distribution of their marital property)

1. **The income and property of each party at the time of the marriage, and at the time of the commencement of the action;**
2. **The duration of the marriage and the age and health of the parties;**
3. **The need of a custodial parent to occupy or own the marital residence and to use or own its household effects;**
4. **The loss of inheritance and pension rights upon dissolution of the marriage as of the date of dissolution;**
5. **Any award of maintenance under subdivision six of this part;**
6. **The loss of health insurance benefits upon dissolution of the marriage;**
7. **Any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of marital property by the party not having title, including joint efforts or expenditures and contributions and services as a spouse,**
8. **The liquid or non-liquid character of all marital property;**
9. **The probable future financial circumstances of each party;**
10. **The impossibility or difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or other interest intact and free from any claim or interference by the other party;**
11. **The tax consequences to each party;**
12. **The wasteful dissipation of assets by either spouse;**
13. **Any transfer or encumbrance made in contemplation of a matrimonial action without fair consideration; and**
14. **Whether either party has committed an act or acts of domestic violence, as described in subdivision one of section four hundred fifty-nine-a of the social services law, against the other party and the nature, extent, duration and impact of such act or acts; (5/3/2020)**
15. **Any other factor which the parties shall expressly find to be just and proper.**

TEMPORARY MAINTENANCE

DRL § 236(B)(5-a)(h): (1) The court shall order the guideline amount of temporary maintenance up to the income cap in accordance with paragraph c of this subdivision, unless the court finds that the guideline amount of temporary maintenance is unjust or inappropriate, which finding shall be based upon consideration of any one or more of the following factors, and adjusts the guideline amount of temporary maintenance accordingly based upon such consideration:

- (a) the age and health of the parties;**
- (b) the present or future earning capacity of the parties, including a history of limited participation in the workforce;**
- (c) the need of one party to incur education or training expenses;**
- (d) the termination of a child support award during the pendency of the temporary maintenance award when the calculation of temporary maintenance was based upon child support being awarded and which resulted in a maintenance award lower than it would have been had child support not been awarded;**
- (e) the wasteful dissipation of marital property, including transfers or encumbrances made in contemplation of a matrimonial action without fair consideration;**
- (f) the existence and duration of a pre-marital joint household or a predivorce separate household;**
- (g) acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of domestic violence as provided in section four hundred fifty-nine-a of the social services law;**
- (h) the availability and cost of medical insurance for the parties;**
- (i) the care of children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws provided during the marriage that inhibits a party's earning capacity;**
- (j) the tax consequences to each party;**
- (k) the standard of living of the parties established during the marriage;**
- (l) the reduced or lost earning capacity of the payee as a result of having forgone or delayed education, training, employment or career opportunities during the marriage; and**
- (m) any other factor which the court shall expressly find to be just and proper.**

Where the court finds that the guideline amount of temporary maintenance is unjust or inappropriate and the court adjusts the guideline amount of temporary maintenance pursuant to this paragraph, the court shall set forth, in a written decision or on the record, the guideline amount of temporary maintenance, the factors it considered, and the reasons that the court adjusted the guideline amount of temporary maintenance. Such decision, whether in writing or on the record, shall not be waived by either party or counsel.

Where either or both parties are unrepresented, the court shall not enter a temporary maintenance order unless the court informs the unrepresented party or parties of the guideline amount of temporary maintenance.

POST DIVORCE MAINTENANCE

Deviation from Formula

DRL § 236(B)(6)(e): (1) The court shall order the post-divorce maintenance guideline obligation up to the income cap in accordance with paragraph c of this subdivision, unless the court finds that the post-divorce maintenance guideline obligation is unjust or inappropriate, which finding shall be based upon consideration of any one or more of the following factors, and adjusts the post-divorce maintenance guideline obligation accordingly based upon such consideration:

- (a) the age and health of the parties;
- (b) the present or future earning capacity of the parties, including a history of limited participation in the workforce;
- (c) the need of one party to incur education or training expenses;
- (d) the termination of a child support award during the pendency of the temporary maintenance award when the calculation of temporary maintenance was based upon child support being awarded and which resulted in a maintenance award lower than it would have been had child support not been awarded;
- (e) the wasteful dissipation of marital property, including transfers or encumbrances made in contemplation of a matrimonial action without fair consideration;
- (f) the existence and duration of a pre-marital joint household or a pre-divorce separate household;
- (g) acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of domestic violence as provided in section four hundred fifty-nine-a of the social services law;
- (h) the availability and cost of medical insurance for the parties;
- (i) the care of children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws provided during the marriage that inhibits a party's earning capacity;
- (j) the tax consequences to each party;
- (k) the standard of living of the parties established during the marriage;
- (l) the reduced or lost earning capacity of the payee as a result of having forgone or delayed education, training, employment or career opportunities during the marriage; and
- (m) any other factor which the court shall expressly find to be just and proper.

2. Where the court finds that the post-divorce maintenance guideline obligation is unjust or inappropriate and the court adjusts the post-divorce maintenance guideline obligation pursuant to this paragraph, the court shall set forth, in a written decision or on the record, the unadjusted post-divorce maintenance guideline obligation, the factors it considered, and the reasons that the court adjusted the post-divorce maintenance obligation. Such decision shall not be waived by either party or counsel.

The following is the advisory schedule for post-divorce maintenance payments: Percent of the Length of the Marriage For Which Post-Divorce Maintenance May Be Payable

Length of the Marriage

Zero to 15 Years	15% to 30%
More than 15 to 20 years	30% to 40%
More than 20 years	35% to 50%

Hypothetical Durations of Post-Divorce Maintenance Per the Advisory Schedule

Length of Marriage	Range of Duration.
3 years.	.45 years to .9 years.
5 years	.75 years to 1.5 years
10 years	years to 3 years
13 years	1.9 years to 3.9 years
16 years	4.8 years to 6.4 years
20 years	6.0 years to 8.0 years
23 years	6.9 years to 9.2 years
25 years	7.5 years to 10 years
28 years	9.8 years to 14 years
30 years	years to 15 years
35 years	years to 17.5 years

The **formula** for the **calculation of spousal support** is 40% of the difference between the parties' total net incomes without dependent children.

If the parties have dependent children, the **formula** is 30% of the higher earning spouse and 20% of the lower earning spouse.