

## **What is Family Mediation?**

Family mediation is a process of dispute resolution that relies on the parties rather than on the Courts and litigation for family decision-making. It entails a series of meetings with a trained mediator who is a neutral facilitator for the family members in dispute. Mainly applied in the area of divorce and post-divorce matters with parties striving for an amicable divorce without a lawyer, family mediation is also used for other family disputes, such as eldercare and business issues.

## **What is the family mediation process?**

Family mediators promote and facilitate discussions that allows the clients to exchange differing views, ask questions, discuss difficult topics, and find solutions. Unlike litigation, it involves face-to-face meetings between the parties. Because the mediator is trained in assisting productive communication, the discussions often lead to resolution without the need for court decision-making. Mediation is done in a series of meetings, usually about 2 hours in length during which the mediator collects background information about the parties and the dispute(s). The parties are guided in what information and documents they need to provide so informed decisions can be made and the parties can work through the issues with the assistance of the mediator. The mediator drafts either an Agreement (suitable for presentation to a Court or to act as a contract between the parties) or a Memorandum of Understanding between the parties.

## **How is mediation different than litigation?**

When parties resolve their disputes by litigation, their contacts are generally indirect -- through attorneys and the rules of the court system. Because of this, litigation is an inefficient way to resolve disputes. With court appearances, including motions, pretrial conferences, and possibly a full trial, the litigation process can be very expensive. Litigation almost invariably causes hard feelings to develop and solidify, deeply affecting not just the parties, but also the children, and other parties, such as in-laws.

Mediation is a more direct process, where the participants are in control of their own destiny. A series of face-to-face meetings led by the mediator can produce agreements that allow many parties to achieve an amicable divorce without a lawyer. Because the parties will not be pushed into win/lose debate or bargaining, solutions can be more creative, and fulfill more of each participant's needs and desires.

## **How are family mediators trained?**

Family mediators have taken between 30 and 40 hours of basic mediation training. Most family mediators have also taken advanced training, and special training in divorce mediation. Many family mediators are licensed attorneys who also practice law. Other family mediators are mental health and other trained professionals. Family mediators may, depending on their interest and backgrounds, concentrate in special areas, such as children, or financial issues.

## **Is Family Mediation Confidential?**

Yes. Your Family Mediator will keep all the information discussed in the family mediation sessions confidential. In litigation, everything becomes part of the public record; even personal matters that the parties would wish to keep private. This is one of the big differences between mediation and litigation. Mediation is considered settlement negotiations.

Most mediations end successfully, without litigation. However, in the rare event that the mediation ends and litigation takes place, a party cannot force a mediator to reveal his or her file or testify in a the divorce case, if the mediator meets certain qualifications established by Massachusetts statute (which most of MCFM's members do).

## **What is the role of attorneys in family mediation?**

A mediator (even if an attorney) does not represent either or both of the parties, but rather functions as a neutral facilitator. Mediators can provide legal information, but cannot give legal advice.

Family mediators generally recommend that each party consult with a reviewing attorney in order to review any agreements arising from the mediator on that party's behalf. "Mediation friendly" reviewing attorneys understand the value of mediation for their clients, and can provide useful input to their client and to the mediator. The cost of mediation, even using reviewing attorneys, is generally much lower than the alternatives.

## **If I choose mediation, will I be giving up my rights?**

Mediators are trained in methods that result in “leveling of the playing field”. If a party is clearly being coercive, a mediator can work through the imbalance so that each party’s views are heard and acknowledged. It is helpful for parties to have a basic knowledge of their rights and obligations prior to, and during the mediation. Internet searches and consultations with reviewing attorneys can help educate the client. The mediation is generally conducted “in the shadow of the law”, with knowing and intentional waivers as requested by the parties.

## **How do I know the mediator will be fair to me?**

In order for mediation to work, the mediator must be neutral and unbiased. Family mediators are not the decision-makers—the parties are. It is very difficult for parties to reconcile divergent points of views, especially when they are in a dispute that could lead to litigation. Mediators are trained to see both points of views and generally report that they see each party’s view as reasonable. What mediation can do is to help reconcile these divergent views with a plan of action acceptable to both parties. Since the parties determine the final result, the mediator’s job is to help the parties be fair to each other.

## **Do we each have a mediator?**

Generally, there is one mediator. Some parties engage two mediators to serve as co-mediators. Sometimes one of these is an attorney and the other is a mental health professional. Some parties have co-mediators that are a man and a woman.

## **Is mediation legally binding?**

Mediation is a completely voluntary process. Any agreements made are not binding, unless the parties wish so make them so. Any party can leave the mediation if he or she feels it is not working for that party. If the parties enter into a written agreement that has been developed during the mediation, that written agreement is likely to be a binding contract. In divorce mediation, often the parties enter into a Separation Agreement, which, if approved by the Court, becomes the legally binding agreement relating to their divorce.

## **How long does mediation take, and how much does it cost?**

Most mediators have an hourly charge for their services. Time is charged for mediation sessions, and also the work that is done between sessions, such as writing agreements or Memorandums of Understanding. The complexity of the case and the personality and history of the participants will cause a mediation to take more or less hours. Divorce mediations are typically completed in 3 to 6 two-hour mediation sessions, plus additional mediator work outside the sessions.

## **Does mediation mean I won’t have to go to court?**

If the mediation is successful and results in a written agreement, the agreement can be submitted to the Court for approval and for the Court to enter an order. In a divorce in Massachusetts, the parties will need to attend a hearing on the divorce in which the agreement is presented, and the judge must make a finding that it is fair and reasonable under the circumstances. In some family mediations (such as family business, elder law, marital mediation), there can be no court involvement at all, and the written agreement (if there is one produced by the mediation) is a legally binding contract.

## **How can we find and choose a family mediator?**

Search for family mediators in your area who are MCFM members, and read about their background and experience in their profiles. If you are in a different state, an internet search will be a good way to find mediators who have created websites and have web presence. Recommendations from friends, relatives, and co-workers are also good ways to find a family mediator.

## **What areas do family mediators work in?**

Most of the family mediation cases are in the areas of divorce and post-divorce disputes. However, mediators are also active in other areas affecting families. In elder mediation, issues involving family participation in care of an elder can be addressed. Mediation is effective in resolving estate planning issues involving elders and the younger generation or second marriages. Couples who live together may wish to enter into a mediated cohabitation agreement. Mediation is also a very effective way to

negotiate prenuptial and postnuptial agreements between married parties.

A relatively new use of mediation is marital mediation, also known as marriage mediation and mediation to stay married. In marital mediation, parties use mediation and standard dispute resolution techniques to solve problems that are derailing their marriage. Mediation is also an effective dispute resolution method for probate disputes, such as will contests and beneficiary disputes. And family mediation can be used to resolve problems that develop in family businesses.

### **What are the alternatives to family mediation?**

Aside from mediation, there is a great range of methods to resolve family disputes. Parties may wish to negotiate directly or with lawyers. They may make use of Collaborative Practice (also known as Collaborative Law), in which there is a series of face-to-face meetings with the parties and their collaboratively trained attorneys and other Collaborative professionals. In Collaborative Practice, the participants have pledged not to embark on litigation with these lawyers. This creates a safe haven where communication can be free and open, and issues resolved.

Where there are disputes about legal issues, case evaluation or conciliation can be helpful. Parties and their lawyers submit a set of agreed facts to a case evaluator (usually a retired judge or an experienced attorney), who renders a “finding” as to the issue in dispute. If the matter is not an issue relating to children or spousal support, arbitration is an out-of court method for resolving disputes. The parties choose an arbitrator, who functions as a judge. The parties can choose whether the arbitrator’s decision is final or not. Finally, litigation is an option for disputing parties. It is now generally considered the least attractive alternative, due to its cost (emotional and monetary) but is necessary in some cases.