A black and white photograph of a concrete surface with a large, jagged crack running diagonally from the top left towards the bottom center. The word "MARRIAGE" is embossed in a serif font across the crack, with "MAR" on the left side and "RIAGE" on the right side, separated by the crack.

**Divorce Mediation in Massachusetts:
What Is It and When Is It Appropriate?**

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WELCOME

What is “winning”?

Is it getting to the finish line first? Knocking out the other player? Having the most money? Hurting the other person? Getting the most attention? Proving that you are right?

These are important human desires and needs when we are in conflict. The question is whether they are usefully put front and center in circumstances where we want to create a positive, healthy relationship with our children after divorce and/or reach an agreement with a spouse that both parties can be comfortable with over time.

Who gets to decide?

Do you want to put your arguments before a judge who doesn't know you and hears hundreds of cases every year? Are there really facts in your life that a judge can determine better than you and your soon-to-be ex-spouse? Or do you want to roll up your sleeves and have professional assistance in addressing difficult issues?

Public or private?

Do you want to have your family conflicts and concerns aired in a public forum or in the privacy of an office and in a confidential process?

These are some of the questions you have to answer in deciding how best to approach your divorce. About 25 years ago, I took my first courses in mediation and negotiation. The skills and perspectives I began to learn then have served me well in my work in business, healthcare and family law. Two years studying human behavior and development in social work graduate school continue to help me to balance the nuts and bolts of laws, regulations and court decisions.

Conflict is inevitable; confronting the other party to a conflict with respect and goodwill is not. Mediation is a process that supports both parties in getting the best possible resolution while minimizing hurt and waste.

My colleagues Arthur Sneider, Elizabeth McGuire and I comprise a full service family law firm, providing Mediation, Collaborative Law, Arbitration, and Litigation services. I look forward to hearing from you.



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Divorce Mediation in Massachusetts: What Is It and When Is It Appropriate?

When a marriage ends, it is like an object breaking into many pieces that have to be put back together in a careful way. Issues like custody, finances, property, and living arrangements have to be considered. Making the pieces fit together can be incredibly difficult.



There are two basic approaches to this “reworking” project. One is to hire attorneys and take an adversarial approach. While not every attorney will automatically go on the offensive, the fact is that lawyers are duty-bound to zealously pursue the interests of their clients – that’s their role. Many lawyers take this to the traditional conclusion and infuse every aspect of a divorce with a hostile, aggressive spirit, sincerely believing that it’s in the best interests of their client. Meanwhile, the billable hours add up and an already broken relationship can be further damaged.

Divorcing couples can pursue a divorce in Massachusetts without retaining counsel, but divorce is complex. A divorce in Massachusetts must address three issues in great detail: parenting, housing and living expenses, and the division of assets. Often spouses need guidance – and there is a second option.

Mediation in a Massachusetts Divorce

Mediation is a private, often less expensive and much less adversarial process where the two parties hire Mediator who acts as a neutral guide and facilitator. The parties meet with the Mediator together (and occasionally separately), and seek to find common ground and solutions to the details of their separation and divorce through exploration, discussion and mutual agreement.

Divorce Mediation in Massachusetts: What Is It and When Is It Appropriate?

Mediation has many advantages over a litigated divorce as long as there is enough trust and good will between the divorcing parties to make it feasible:

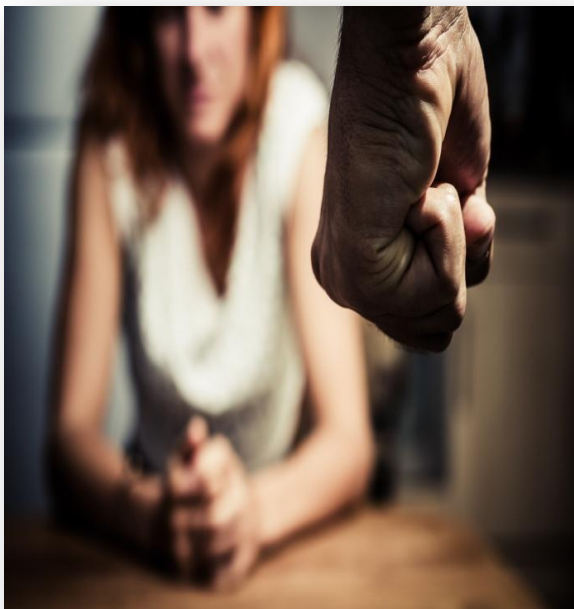
- Mediation is almost always less a emotionally turbulent and more peaceful approach, fostering communication instead of demands and threats.
- Mediation can be a much faster process, as it does not rely on the court's calendar for its scheduling.
- Mediation is more flexible;
- Mediation doesn't preclude hiring an attorney for advice and review – in fact, most professional mediators would encourage this.
- Mediation keeps control over events in the hands of the people going through the divorce, instead of leaving major decisions to the lawyers and a judge.



The goal of **divorce mediation** is to produce a Separation Agreement that the Massachusetts Probate Court will accept and that is mutually agreed to by both parties. A mediator will encourage both sides to have the final agreement reviewed independently by an attorney before signing. However, it is unusual for an attorney to be present during the actual mediation sessions, as this might inhibit the free expression of feelings and thoughts and isn't necessary to the process. This alone helps to keep billable hours lower than in a litigated divorce.

When Mediation Isn't an Option

Mediation doesn't preclude going to court; if mediation fails, both parties retain the right to pursue their interests through other channels. There are times, in fact, when mediation is simply not the right course of action:



- **Spousal Abuse:** Mediation requires both parties to feel empowered and in control. Couples that have experienced abuse or neglect already demonstrate a power imbalance, and it is common for one spouse to intimidate or pressure another. In these situations, the victim usually needs the advice and protection of an attorney.
- **Inability to Express Oneself:** If one spouse is incapable of speaking for him or herself for any reason, mediation may not be possible. Both sides must be able to express their thoughts, needs, and desires.
- **Anger:** Some marriages end by mutual consent, and some are burned down by one or both of the people in it. When two people can't stand to be in the same room together, mediation is not usually the right process.
- **Deceit:** If one spouse suspects the other will withhold information, attempt to hide assets, or outright lie about circumstances, mediation is not appropriate. There has to be at least a minimal baseline of trust for mediation to be an effective solution.

Divorce Mediation in Massachusetts: What Is It and When Is It Appropriate?

Deciding how to approach the dissolution of a marriage is an emotionally-charged process that requires careful consideration. Divorce is complex – even under the best of circumstances – and almost everyone needs advice and guidance. Whether you get that guidance from a lawyer in an aggressive court setting or a mediator in a conference room depends largely on the state of your relationship.

*Sometimes neither litigation nor mediation is exactly the right approach. There is a third option called **Collaborative Divorce**, which combines some of the strongest elements of both approaches. This is a formal process, which is described at www.masscl.org.*

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