



Five Reasons Why Divorce Mediation is the Intelligent Alternative

Is it possible to get divorced and protect your children from the crossfire, protect your savings and stay friends with your ex? Is there a way to smooth the long, bumpy path to divorce? Is it possible to have a fair and balanced divorce agreement and eliminate the gamble of what a judge will say in court? I have good news; the answer is yes! How? By taking control of your divorce through Intelligent Alternative Mediation.

Intelligent Alternative Mediation (I.A.M.) provides a structured, practical alternative to traditional divorce litigation. The I.A.M. process is confidential, cost effective and allows you to retain control over the outcome as well as the length of time it takes to bring matters to a close so that you can move on with your life. By engaging both parties in this way, I.A.M. gets the issues on the table and then actively works toward practical solutions. The result? Together, **you control the cost and outcome of your divorce** and develop a practical solution you and your ex can actually live with.

A Certified Mediator guides parties in a non-adversarial way to resolve divorce-related issues, *i.e.*, division of property, parenting arrangements, child and spousal support, etc. The techniques practiced during the I.A.M. process build the foundation for long-term, cooperative and respectful communication, which is especially important when divorcing couples will be co-parenting and interacting with each other and their children.

The I.A.M. process addresses legal and practical issues by considering both parties' concerns while simultaneously focusing on joint goals (*e.g.*, avoiding a lengthy court battle, saving money or being able to communicate respectfully for the sake of the children).

A divorce mediator does not take sides. Instead, the I.A.M. process focuses on common goals and uses cooperative techniques to resolve issues. The mediator works with participants to create an agreement that is practical and personalized to their needs and lifestyle. This tailored approach means that I.A.M.'s agreements are personalized and as a result they stand the test of time. When both parties are involved and invested in the outcome, neither party feels cheated or surprised. With traditional divorce litigation, there is a chance that one person will feel cheated and will want to go back to court.

The I.A.M. process is different because the mediator keeps the lines of communication open by helping brainstorm ideas and solutions through visualizing practical and future implementation of these solutions. The I.A.M. process models problem-solving techniques and guides participants through the decision-making process.



Having been a victim of divorce litigation myself, I became a family law attorney and founded I.A.M. to give divorcing couples a genuine alternative to traditional divorce. I am passionate about helping families reach a workable and amicable settlement of their divorce as well as enabling those families to transition with dignity while shielding children from the ugliness of court battles and preserving family financial resources by minimizing the expense of divorce. The following are five reasons why mediation is the intelligent alternative to a traditionally litigated divorce.

REASON #1: Mediation Costs 90 Percent Less Than Litigation

Mediation generally costs less than ten percent of the cost of traditional divorce litigation. Litigation is combative and the win-lose approach can take years and tens of thousands of dollars to resolve.

Mediation saves money by eliminating the maze of court filings, discovery requirements and the need to adhere to court procedures that take hours of work by attorneys on both sides. Mediation encourages cooperation, direct communication and full disclosure by presenting the parties with the law, likely scenarios and outcomes and helping the parties to reach an agreement. The following case study illustrates the difference between mediation and traditional litigation.

Bob and Terry had been married for over twenty-five years. Their adult children had already graduated from college. Bob and Terry wanted an uncontested divorce and both wanted to preserve their assets for their respective retirements as well as divide their property in a fair manner. Bob and Terry also both desired to preserve certain assets for their children. Their larger assets included a marital home and a bagel shop business they owned and operated together.

During their marriage, Bob and Terry started and built their bagel shop business together. They divided the tasks of the business according to their strong suits and were both equally involved. With two separate households on the horizon, both Terry and Bob were concerned about upcoming expenses and the unknown. Bob had always handled the business and personal finances, but neither Bob nor Terry knew the market value of their business or whether they wanted to sell or not.

Other concerns included the need for a plan if they continued the business or if one of them was ready to retire before the other.

Bob and Terry's Case Study Illustrates the Savings of Mediation

In the case study, after twenty-five years of marriage, the divorcing couple had watched friends and family suffer the expense, stress and years involved with traditional divorce. Bob and Terry wanted to preserve their retirement and other assets and stay friends for the sake of their business, their adult children and future grandchildren.

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They had grown apart and wanted to pursue their individual interests, but didn't want to destroy what they had built together over the years.

The couple met in several I.A.M. sessions. The mediator began by encouraging both Bob and Terry to state their concerns and what was important to each of them. Once their priorities and concerns were on the table, the mediator made a list of Bob and Terry's common goals. Then together they made a list of their community property to be divided. The mediator encouraged the couple to consider several alternatives for division. The mediator walked the couple through several possible scenarios in which the couple might divide their marital property. For example, they could decide to sell the home and business and divide all the proceeds or they might decide to make an equitable division of property with either Bob or Terry taking the house and the other taking the business. The parties were free to discuss any option that might work for them.

In order to understand the fair market value of their bagel shop, the mediator helped them select a financial professional. Both parties met with the financial professional and agreed to accept that professional's valuation of the business rather than spend money hiring competing professionals. After reviewing the value of the business and several scenarios they were confident in their decision. Bob and Terry decided to each retain a 50 % interest in their bagel shop and continue running the business by equally dividing the time to manage the store. They agreed to share all costs and profits of the business 50/50. They further agreed that they would sell their business in six years and divide the profit 50/50.

Following several mediation sessions, the couple also agreed to sell their large, family home and divide the proceeds 50/50. Sale of their large home allowed them to each select and purchase a new, smaller home of their choice. In addition, the couple agreed to divide their retirement account 50/50 and rollover those retirement funds into separate IRA accounts to avoid paying taxes and penalties.

Bob and Terry requested that the mediator prepare a stipulated judgment, which contained the terms of their agreement. Once they had both read and approved the contents of the agreement, they filed the agreement with the court. The court then returned a stamped copy of the judgment, which meant that the language of their stipulated judgment had become the orders of the court. The couple completed this process in six meetings with the mediator and one meeting each with the financial professional. The parties continue today as friends and business partners and are able to attend family events without stress or drama.



What does a traditional divorce cost?

Divorce litigation through the court has many different costs. First, each individual selects and pays a retainer to their respective attorney. The initial retainer paid to each family law lawyer can vary from approximately \$10,000.00 each up to \$50,000.00. Attorney hourly rates can vary from \$350 to \$1,000+ per hour.

One lawyer prepares a divorce petition, which is filed with the court at \$435.00 and serves to the other party. The other lawyer will then prepare and file a response to the petition. The response, which costs \$435.00 must be served on the other party. Proof of proper service of those documents must be filed with the court. There are fees for service of process and filings with the court.

Next begins the Discovery process, which is a formal determination of the value and extent of marital assets for equitable distribution. Service of process is \$100.00 - \$450.00 per service and filings are between \$0 - \$150.00. In discovery, interrogatories (written questions), requests for admissions and document requests are prepared by an attorney and served on the opposing party. The requests are then answered in writing and returned. Preparing and responding to discovery can be \$10,000 - \$30,000.

Another form of discovery is deposition. Depositions might be taken if there is a dispute as to certain facts, *e.g.*, the value of a business or the necessary expenses of the children. Attorneys must spend time preparing for deposition by planning the questions to be asked. If your deposition will be taken, your attorney will spend four to eight hours prepping you. Deposition questions are used to obtain information and reveal incompatible statements made by one party. Any incompatible answers are then used to cross-examine the answering party at trial. It is also necessary to pay for a court reporter to record the sworn testimony at deposition, which is usually \$500.00 - \$800.00 for the day. Depositions are often video-taped which is an additional cost of \$750.00 - \$1,400.00. A deposition may last several hours or more than one day. Depending on the two attorneys' hourly rates, the length of time and the amount charged for additional services, a deposition could cost between \$2,500.00 and \$15,000.00.

In some circumstances, it is necessary to hire experts to testify. For example, if there is a dispute as to the characterization, location or value of community assets or of a prior spending of community assets by a party, a forensic expert may be necessary to provide a professional opinion to the court. For an evaluation of a business or spending patterns, forensic accounting professionals typically begin with a retainer of approximately \$7,500.00, frequently a small portion of the total paid to the forensic by the time of trial. A typical divorce takes approximately two years to get to trial. You may know people who have been fighting in court for many years.



REASON #2: Mediation Saves Time

Mediation is often measured in weeks or for a complicated case, sometimes months. In contrast, litigation is always measured in years. Mediating parties are limited only by their own schedule. There is no need to wait for the court's availability or to wait for both attorneys to be available on the same date for meetings or hearings. Even a case with complicated child custody issues was resolved through mediation in 12 weeks: three in-person meetings, three telephone conference sessions, and each having separate telephone conversations with the mediator. High conflict situations can take longer, but the time and cost savings are still substantial.

REASON #3: Mediation of Divorce is Better for Children

For most people, separation and divorce is traumatic and exhausting. For children, a long and bitter divorce causes many long-term side effects: poor school performance, depression, disconnecting from friends and activities, drug and alcohol use, promiscuity and growing up too fast. A long legal battle polarizes family relationships, creates an environment where children feel the need to take sides and feel guilty for loving both parents. Traditional litigation drains family financial resources at a time when setting up two households instead of one is already an additional expense. Litigation drags on causing continued emotional and financial strain and distracts from the common goal and priority of how to raise healthy, well-adjusted children.

Recently, Cindy and Frank, a dual-income couple with two children entered into their first divorce mediation session. The couple hoped to agree on a custody schedule, but had trouble with the mechanics of a dual-parenting plan. Despite trying to cooperate, they were struggling with creating a schedule that they both felt was fair and workable. Since the children were each under six years old, both parents worried about not seeing the children for four nights or even five nights in a row. Prior to mediation, Cindy and Frank had already spent a great deal of time sending letters back and forth and a great deal of money between their separate attorneys configuring suggested parenting plans. None of the plans seemed to meet the childrens' needs or give both parents quality time with the children. Frank was also concerned about the confidentiality of the divorce. His psychology practice was thriving, and he was afraid that his clients would have less faith in him if they learned the details of his divorce and problems in his home life.

The mediator helped Cindy and Frank identify specific issues with the various schedules and created a different, flexible schedule where the children wouldn't stay more than three consecutive nights away from either parent. The mediator helped the parents work through a few scenarios, including scheduling a dinner or other visits to reduce the span of time between seeing the children. The mediator also discussed possible situations such as a parent having a business trip, a sick child, children's activities, scheduling of vacations and holidays, etc. Frank and Cindy were

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guided through the process of creating a workable plan that actually met their children's needs and also made sure both parents were able to have quality time with the children. After the mediation process, both Cindy and Frank were comfortable with their ability to work through and resolve their issues. Cindy and Frank became confident that they would be able to be flexible and trust each other in adjusting the schedule as necessary when the children got older.

I.A.M. helps couples navigate the divorce process with a positive, forward thinking focus. Avoiding unnecessary fighting is critical not only for their children, but also for parents because they are going to share their children's lives forever. Mediation helps parents to focus on the needs of their children, which are often trampled by combative attorneys during divorce. Mediation reminds parents that children are made up of both parents. Fighting and criticism of the other parent is criticizing half of the child – a half that the child cannot change.

Mediation encourages everyone to focus on practical and workable solutions even when circumstances are not ideal. This allows everyone involved to establish a new normal and look forward to events like graduations, dance recitals, sporting events and weddings without awkwardness or drama for the children or the parents.

After several sessions of mediation, Frank and Cindy identified each issue that was important to them and explored the options that best addressed their concerns. After only a few sessions, they agreed on a division of their property and assets and debts. Most importantly, Cindy and Frank agreed upon a parenting plan, which allowed them to maintain quality relationships with their children. Cindy and Frank were happy with their results and the money they saved. They both agreed to contribute the money saved to the children's college fund.

If Frank and Cindy had proceeded with divorce litigation through attorneys, they would have continued to focus on their disagreements while draining their financial resources on child custody experts, attorney fees and court costs. Frank and Cindy may have spent years and well over \$100,000 in litigation. Instead, they resolved their differences in a matter of weeks and saved a large sum of money.

Mediation helps couples navigate the divorce process with a positive, future-oriented focus. Avoiding a drawn out battle in court is critical for parents because divorce does not terminate the parenting relationship. Cooperative co-parenting skills are critical to the healthy adjustment to divorce and success in life for children.



REASON #4: Mediation Means Control & Confidentiality

Mediation promises control. Traditional litigation gives power to a complete stranger—the judge, who will make decisions that you must live with for a long time. Unfortunately, we have all heard the nightmare stories from the victims of a “judge with a grudge.” Mediation participants are able to avoid the “Russian Roulette” circumstances of divorce litigation. The I.A.M. mediator guides participants to reach agreement on practical solutions that work and that are tailored to the needs of the individuals involved. Mediation enables families to create a personalized compromise that fits their needs, requirements and lifestyle rather than having a stranger impose an arbitrary or “one size fits all” arrangement. While most judges are professional, they are still human and frequently bring their own baggage and biases to the table. With the State and County budget cuts, judges are overloaded with cases and do not have the time or the patience to understand your unique wants and needs.

Mediation is unparalleled because the mediator does not tell the parties what to do and has no authority to impose a judgment. The mediation process encourages creativity and brainstorming to devise a solution that works. Because mediation isn't bound by the same restrictions as courts, couples in mediation are free to consider and experiment with a greater range of options and often feel good about their final agreement.

Mediation promises confidentiality

Court proceedings and their records are open to the public, while negotiations that occur in mediation are confidential. In mediation, it is safe to consider options and alternatives without fear that your statements, finances, personal history, questions or concerns could be seen, heard or accessed by people in your professional or personal circle. In addition, mediation discussions cannot be introduced as evidence to be used against you in court. This means that you are free to discuss settlement options openly and try to resolve any conflict without airing your laundry in public. As a result, you can be confident that your family's circumstances and finances remain private.

REASON #5: Mediation Allows More Creative and Satisfying Solutions

Mediation continues only for as long as you, your spouse and the mediator want it to. Mediation meetings can take place daily, weekly, bi-weekly, monthly or as necessary. With divorce mediation, face-to-face problem solving often allows for detailed planning and creative, satisfactory outcomes. For families with children, the cooperative process of mediation will set the stage for long-term co-parenting communications and will set the tone for a quality post-divorce relationship in addition to preserving your financial health.

Traditional divorce litigation often results in a skewed win-lose outcome that addresses legal issues without providing a road map for a successful life after divorce. Mediation

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addresses the legal issues as well as personal concerns to achieve a practical and successful outcome.

Another case study involves Charles, an intelligent, hard-working family man. Immensely proud of his family, Charles was blindsided when Caitlin, his wife of fifteen years, announced she wanted a divorce. Caitlin gave Charles a choice of divorce mediation or said she would proceed with filing divorce papers.

Charles feared he would only be able to see his children every other weekend and didn't want to move out of the house. Charles watched his best friend go through a lengthy, expensive divorce battle that destroyed the close bond he had with his teenage daughter. Charles feared a repeat of his friend's divorce.

Charles and Caitlin attended their first mediation session. It was difficult for Charles to accept that the marriage was over and he complained that he was going to take all the "hits" in this divorce because it was Caitlin who wanted out. Caitlin was frustrated with Charles' inability to accept the circumstances. As tension rose and communication started to break down, Caitlin announced that maybe she should just hire an attorney and file for divorce.

The mediator helped Caitlin and Charles re-access what was most important to them—the wellbeing of their children. Both Caitlin and Charles felt that it was important that their children should not be subjected to an acrimonious divorce. Both wanted their children to receive a college education and as parents, they wanted to pay for college. Charles wanted to be sure that he would see his children grow up. He was nervous about spending the family savings—earmarked for the children's college—on a long divorce battle. Caitlin was concerned that she wanted to move on with her life and knew that a lengthy court battle would be expensive and prevent her from moving forward.

After several sessions of divorce mediation, Caitlin and Charles reconciled their differences by identifying each issue that was important to them. The mediator guided them to explore options that addressed their concerns. Understanding their common goals, Caitlin and Charles were able to divide their assets and debts and created a fair parenting plan. The mediation process diffused Caitlin's concerns and allowed Charles to ensure he would have quality time with his children after separation. Caitlin volunteered to move out of the family home and gave up her share of investment in the house. In exchange, Charles committed to paying for 100% of the children's college and other advanced education costs and expenses. Both Caitlin and Charles felt good about their agreement and were able to move on in a positive and productive way.



Let Us Guide You Through Your Difficult Family Law Matters

Divorce mediation teaches communication skills that are useful in managing the realities of co-parenting. As children grow and their needs change, parents are able to successfully negotiate issues using the same skills they developed in mediation. These skills model how to resolve conflict with respect, fairness and equality. Mediating divorce can make the difference between many bitter, angry years versus an amicable post-divorce relationship.

Talitha Davies Wegner is a Certified Mediator and founded Intelligent Alternative Mediation to provide divorcing couples an effective alternative to a long, costly court battle. Mediation allows clients to maintain control over the costs and results of their divorce agreement. If you want to save money for your children's college and be civil with your ex so you can attend birthdays, graduations and weddings without drama, then mediation is the intelligent choice for you.

For more information, call us at 310.481.0300.