

# Mediator

NEWS & NOTES

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### MEDIATING WITH ATTORNEYS

Did you ever experience that mediation where an attorney was present? Maybe it was a parenting plan case with the Attorney for the Child in the mediation, or was it a Small Claims Case with the claimant's attorney in the room. . .

Come out for a 2 hour in-service with Abigail Yeo, our Cornell Law School intern and talk about Mediating with Attorneys. We will learn and talk about the over-zealous advocate, the belligerent attorney, the average attorney and the party goals. We will also watch some of the video-"The Contractors Contract" from the Institute for the Study of Conflict Transformation, Inc.

For Tompkins County: Tuesday, May 28<sup>th</sup> 6:00-8:00 pm  
-at our Ithaca Office in Center Ithaca

For Chemung/Schuyler Counties: Monday, June 17<sup>th</sup> 6:00-8:00 pm  
-at our Elmira Office-215 E. Church Street  
2<sup>nd</sup> floor conference room

"Just listen. That's all. James Brown got a song. *Talking' loud and sayin' nothing*, ever heard that song? "



# UPDATES

## PRE-MEDIATION CHECK-IN

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This month CDRC will have 4 new mediators. They will be attending the Basic Mediation Training at The Center For Dispute Settlement. The Center For Dispute Settlement is one of the 3 mediation centers in NYS that practices Transformative Mediation. One major difference from CDS and ourselves is that we practice co-mediation and they practice solo mediation. At the end of their training, the trainees will be completing their video taped roleplays back here at the CDRC office. They will work with myself and a CDRC coaching partner. They will be attending Parenting Plan mediation training at Center for Dispute Settlement in July. The volunteer coordinator will be placing them in observations before and after that Parenting Plan training .

It is very important in the next few months that mediators arrive to the center to mediate at least 15 minutes before their mediation session is to start. We will be asking the new apprentice mediators to arrive 15 minutes prior to the start of mediation in order to meet the mediators they will be observing and in order to settle into the room before the parties arrive.

As these new apprentices start observing, part of their training will be to see how co-mediators work together. This will be different from their basic mediation training. It will also help the new mediators to see how the co-mediators prepare for their upcoming session. As a reminder I have included the Pre-Mediation Checklist from your original training.

# Pre-Mediation Checklist

## 1. FOCUS ON YOURSELF – your state of mind, energy level

## 2. FOCUS ON YOUR CO-MEDIATOR - GET TO KNOW EACH OTHER

Describe to your co-mediator:

- your state of mind, energy level
- previous mediation experience, overall and with this type of case
- comfort or discomfort with issues such as yelling, swearing, emotionality, silence,
- strengths and weaknesses

## 3. FOCUS ON SUPPORT AND LEARNING

Agree to spend at least 15 minutes post-mediation, immediately or within the next few days:

- to assess the mediation itself
- to exchange feedback about how you did individually, and as a team

Mention areas where you want specific feedback about the mediation

## 4. FOCUS ON TEAM WORK

Decide how to communicate with your co-mediator during the mediation.

*For instance:*

- *eye contact*
- *mediator private sessions (caucuses)*
- *discussion with each other while parties are present*
- *other techniques that have worked for you*
- *what to do if you disagree during the mediation*



Mediator in Chemung County

I started with CDRC about, five, six years ago. I must have heard Gina talking about CDRC or found a brochure or something. I don't remember exactly how, but the next thing I know, I was in class on mediation training. I was going to school and it just interested me.

A lot of folks that come to mediation, we tell them, "It's better for you to work it out. You don't have to agree. But try to do it here instead of having the judge doing it." Because most of the judges say, "That's it. It's a done deal. It's over." Hopefully, when they leave they remember what went on, and know they had a better outcome.

I had some mediations when parties were just so stubborn. You can see a good outcome, but they just want to keep to their position. Once, one party was like, "Okay, whatever you say, whatever you want to do." And the others still wouldn't move. They just kept their position. This person had a choice to pay triple the amount or dismiss it and just pay the original amount. They wouldn't do it.

Some of them get a second chance, they come back. A lot of them I'm sure, they would be like, "Ah, I should have listened." And now it's binding.

Most of the mediations I do are custody mediations, parenting plans. Young, in love and then something happened. They can't communicate with each other. That's what I see a lot. All you got to do is just talk. People, they get together, they want to start families and stuff, then they stop talking to each other. That's what I see most, the relationship issues here in this town. I mean it could be husband and wife, partners or just neighbors. People who don't want to talk, or don't know how to talk. I don't know what it is. I'm here to help, listen. That's what it is,

you finally get a chance to hear what the other person is saying. And all you have to say is, "Maybe I am wrong", or "Maybe I can't change." Or give in a little bit.

Mediation skills can also be used in everyday life. I don't know why, just in basic conversation, people keep talking over each other. Slow down a little bit. Listen, are we on a time clock? I don't know what it is with the



folks, this time issue. They don't have time to listen.

Sidney's advice for Julia the cdrc intern and law student

Just listen. That's all. James Brown got a song. *Talking' loud and sayin' nothing*, ever heard that song? Google it! Talking loud and saying nothing, that's cause you're not listening.



## CELEBRATING ANNIVERSARIES

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8 years  
Jim O'Brien  
Schuyler Mediator  
O. Jane Murphy  
Chemung Mediator

2 years  
\*LeGrace Benson  
Tompkins Mediator

Thank you to all our volunteers for choosing to make a difference in the lives of people experiencing conflict.

\*Le Grace Benson originally was a mediator with CDRC from 2002-2007. She came back to CDRC in 2016 to re-take the training and re-engage as a volunteer again. Counting her first time as a volunteer mediator, LeGrace has a total of 5 years of volunteer service with CDRC.



HIGHLIGHTS FROM THE HUB  
CELEBRATING 25 YEARS!

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#NAFCMmorethan

The 2nd Edition of Manual for Colleges & Universities Developing Programs in Peace & Conflict Studies is available for download. Various thought leaders have contributed to this collection of lessons learned on the process of developing programs, certificates and degrees in peace and conflict studies at colleges and universities. This edition includes a section on the 9 Hallmarks of Community Mediation penned by NAFCM members. Click here <https://conflictstudies.org/books/manual-pcs-v2/> to learn more and to get your copy.

# Child Custody and Visitation in New York

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## What is child custody and visitation?

- Custody is the authority to make decisions about the child’s care, including education and medical care.
- There are two types of custody.
  - Sole custody means that one parent has the authority to make decisions about the child. The non-custodial parent may have the right to receive medical or education information, but he/she does not make the decisions.
  - Joint custody means that two parents (and sometimes other caregivers) share the authority to make decisions about the child. With joint custody, the parents must communicate well enough to keep each other informed of the child’s needs and to make decisions together.
- Decision-making authority is separate from where the child lives or visitation.
- Courts in New York use different phrases like “physical custody” or “primary placement” to describe where the child lives primarily. Courts use phrases like “visitation” or “secondary placement” to describe the parenting time for the other parent.
- The court can set a visitation schedule that suits the child and the parents’ schedules. Or the court can keep visitation as agreed between the parents.

## Who can get custody of a child in New York?

- The mother and legal father can ask for custody. A legal father is a man who has signed an Acknowledgement of Paternity or received an Order of Filiation from the court or is listed as father on the child’s birth certificate. Each of these documents states that the man is the legal father of the child. See the article Paternity in New York.
- Neither parent has a greater right to custody. If there is no custody order, either parent can keep the child.
- Relatives and friends of the child can ask the court for custody. First, they must prove that there are “extraordinary circumstances” that would give them the right to ask for custody in preference to either parent. If they can show extraordinary circumstances, then they must prove that it is in the best interest of the child to have custody.

## Who can get visitation in New York?

- Either parent, siblings and half-siblings, and grandparents can ask for visitation. The court will determine whether visitation is in the child’s best interest. A parent is entitled to frequent and meaningful visitation, unless it is shown that it would be harmful to the child.

## **How do I ask the court for custody or visitation of my child?**

- Anyone can file a custody or visitation petition in Family Court. The parent must name the other parent on the petition and explain the reasons why he/she should have custody. Either parent in a custody or visitation petition has the right to an attorney. If a parent or custodian cannot afford an attorney, Family Court will assign one to him/her.
- A parent can request custody or visitation when he/she starts a divorce in Supreme Court. While a divorce case is open or pending or new petitions in Family Court will be transferred to the divorce case in Supreme Court.
- An Attorney for the Child will be assigned to represent the child. He/she tells the court what the child wants. The Attorney for the Child will meet with the child and perhaps the parents.
- At one or more court appearances, the parents will have the opportunity to reach a custody and visitation agreement. The court can issue temporary and final orders.
- If there is no agreement, the court will have a trial.
- If a parent or custodian does not appear in court, the court may issue a warrant for his/her arrest or the court may issue a default order.

## **How does a court decide who gets custody of a child?**

- First, the court decides if it has jurisdiction to hear the case. A court has jurisdiction if:
  - the child is less than six months old and lived in New York his/her entire life,
  - the child has lived in New York for the past six months,
  - New York issued the last custody order for that child, or
  - the child is in New York after an emergency occurred in his/her home state.
- If a parent requests custody, the court decides what custody arrangement is in the child's best interest. The court will consider each parent's lifestyle, stability, and ability to care for the child. For example, the court will consider whether a parent uses drugs, whether a parent has a clean and stable home, and how much time each parent spends with the child. The court will also consider whether there is domestic violence.
- The child can state his/her preference through the Attorney for the Child. Older children have greater weight given to their preference, but until the child is 18, the court makes the final decision regarding where the child lives.

## **Can custody or visitation of my child be changed?**

- Either parent can file a petition to change custody or visitation. That parent must prove that there is a significant change of circumstances since the last order and that a change to custody is in the child's best interest.
- Either parent has the right to an attorney in this type of case. If a parent or custodian cannot afford an attorney, one will be assigned.

## **Can a parent move away with the child?**

- If the parent with physical custody or primary placement wants to move with the child so far away that the other parent's visitation will be affected, the parent must obtain permission from the other parent or the court before moving.
- A parent can request permission to relocate with the child by filing a custody modification petition in Family Court.

## What happens if the other parent does not follow the custody and visitation order?

- If you have a custody and visitation order and the other parent refuses to return the child to you, you may contact the police for assistance in returning the child or in serious circumstances for the other parent's arrest. Also, you may file a violation petition in Family Court. Parents and custodians can have attorneys assigned to represent them regarding violation petitions.
- If the other parent refuses to visit the child, the court cannot force him/her to visit. Instead, that parent's visitation might be limited and will not be increased until he/she visits the child consistently.

## Can a parent stop visitation if the other parent does not pay child support?

- The custodian or parent cannot stop visitation if the other parent does not pay child support. Instead, he/she can file a child support violation petition to require payment. See the article Child Support in New York.

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This article provides general information about this subject. Laws affecting this subject may have changed since this article was written. For specific legal advice about a problem you are having, get the advice of a lawyer. Receiving this information does not make you a client of our office.

This parenting plan resource comes to you from LawNY:



### Legal Assistance of Western New York, Inc. ®

We provide free legal aid to people with civil legal problems in western New York.

<https://www.lawny.org/node/8/child-custody-and-visitation-new-york>

Copies of this tool will be in the file cabinet in both the Chemung and Tompkins Mediation Room file cabinets with the Parenting Plan Checklist and Support Custody at a Glance sheets. Schuyler mediators will receive copies to put in their Mobile Mediation Bags.