

**WHAT YOU SHOULD
KNOW ABOUT**

**Domestic
Violence
and
Mediation**

What is mediation?

Mediation is a way of working out differences in a divorce or a custody case (see parental rights and responsibilities below) outside of a courtroom. It is a process where people involved in a dispute work with a neutral third person known as a “mediator” to help them both come to an agreement on some or all of the issues in their case.

When mediation works best, it can help lessen the conflict in a case and lead to a decision both sides feel is fair, without having to continue or argue the case in court. Mediation may cost less money than having to pay lawyers for court time.

A mediator’s role is to create a positive environment so that the people involved in a case can communicate with less conflict. Mediators work to understand the point of view of everyone involved and then may give options or suggestions they feel may lead to an agreement by both parties.

If a decision is reached the agreement will then be given to the court. If you have an attorney he or she should review the decision before it is given to the court. Once the court approves the agreement, it will be enforced just like a court order.

Parental Rights and Responsibilities

****Note:** Under New Hampshire law the use of the phrase “custody” has been replaced by “parental rights and responsibilities.” This is important to know because this phrase may come up in any paperwork and/or hearings you have with the court.

Why mediation?

Going to mediation does not mean you are required to settle the issues in your case only that you will try. Courts use mediation because it may speed up the amount of time a case spends in the court system. Additionally, in cases where there is **no** domestic violence or abusive behavior, mediation may reduce the arguing and in custody cases help parents to get along for the sake of their children.

The Family Division in the court system has what is called “a presumption for mediation.” This means the court expects you to try to work things out before having a court hearing. The court cannot tell you that you must reach an agreement. Parties are welcome to have the court decide the case if mediation is not successful. New Hampshire law (RSA 461-A:7) says that in all cases involving disputed parental rights and responsibilities (formerly custody) the court may order the people involved to go through mediation.

Mediation is based on the idea that each party has the power to communicate their needs and desires to the mediator. Mediation may not work well in cases where there is one party who does not have that power to communicate or where there

has been violence or threats of violence. Mediators may vary in their experience working with cases where there has been domestic violence. As a result, some mediators may not recognize manipulation or coercive behavior on the part of your ex-partner. This can pose very serious risks both to your safety and to your ability to work for a fair outcome in your case.

What is the Family Division of the Court?

Cases involving parental rights and responsibilities, child support, domestic violence petitions, abuse/neglect cases, and children in need of services (CHINS) are handled by the Family Division of the court system which is now in place in almost every county in New Hampshire (it will be in place across New Hampshire within the next few years.)

Mediation can be dangerous for some victims of domestic violence

New Hampshire law states that people do not have to participate in mediation if they have a Final Protective Order (also know as a Final Domestic Violence Restraining Order) against their partner, or have a partner that has a criminal conviction or plea to a domestic-violence-related crime.

Mediation may not work well in relationships where physical or emotional abuse is occurring or has occurred. In these cases mediation may be dangerous because:

- ✦ Your abuser may use violence, threats or emotional abuse to control and intimidate you into making agreements that you are not comfortable with.
- ✦ Your abuser may use the mediation process to continue his/her pattern of power and control over you.
- ✦ Your abuser may not want to work with you to come to a fair agreement, and even the best mediator can't make this happen.
- ✦ If you have to worry about your safety, it may be difficult for you to focus on your other needs or the needs of your children.
- ✦ You may be bullied into agreeing to things that are not best for you or your children.

If you fear violence or any type of abuse from your ex-partner, you will need to decide if mediation is the right choice for you because the mediator and the court may not be able to keep you safe. It is important to seriously consider the possibility that your ex-partner may continue to be violent and/or abusive. Domestic violence often gets worse after the break-up of a marriage or relationship, or when the abuser feels like he or she is losing power and control over the victim.

What is a First Appearance?

A First Appearance is when the court requires you and your ex-partner (as well as other couples who have filed for divorce or parenting plans) to be in court. If you have filed for divorce or filed a parental rights case (formerly "custody case"), the court will order you and your ex-partner to participate in mediation when you go to your First Appearance. The judge will make decisions about how your case will go forward, and give you information about things you may need to do to obey the law. If you have children, at your First Appearance you will hear about the Child Impact Seminar you must attend, the Guardian Ad Litem (GAL) who may be assigned to your child, parenting plans, child support and mediation.

If you have a Final Protective Order against your ex-partner the court will make sure that you are not scheduled to go to the same First Appearance as your ex-partner. Please note that anything you say or write in court will be made known to your ex-partner if he or she is not there, and it will also be kept on record with the court.

You may ask the court not to disclose your address in any of the court papers that get sent to your ex-partner.

What to do at your First Appearance if you do not have a restraining order or your abuser does not have a domestic violence related conviction but you have been abused?

At your First Appearance you will need to decide whether you want to participate in mediation and state your choice and the reasons for it to the Family Division Case Manager and then again out loud in open court.

Unless you have specifically asked the court to make arrangements so that you do not have to see your ex-partner in court then that person will be at the First Appearance. There will also be other couples present who have filed for divorce or parenting plans.

Definitions:

Child Impact Seminar: New Hampshire law requires that anyone with minor children who is getting divorced or who has filed or responded to a parenting petition (formerly "Petition for Custody") must attend a four hour child impact seminar called "Children First" which addresses the effects of divorce or separation on children.

Guardian Ad Litem (GAL): is a person who is appointed by the court to represent the best interest of a child or incompetent adult in any case where the court thinks it is necessary to appoint such a person.

If you are afraid of your ex-partner

A crisis center advocate can assist you with safety planning.

You can contact your local crisis center for more information and confidential support 24 hours a day (see the statewide contact information at the end of this brochure.) An advocate can help you apply for a domestic violence restraining order if you don't already have one, or may be able to go with you to your First Appearance or mediation sessions if you choose to participate.



If you do not want to participate in mediation and you have a restraining order

The court cannot order you to participate in mediation.

However, if you and your ex-partner both agree, you may participate in mediation. New Hampshire law (RSA 461-A:7, V.) says that "the court shall not order mediation if there is a finding of domestic violence as defined in RSA 173-B:1, unless all parties agree to mediation." A "finding" means legal documentation of the abuse. Some examples include: a conviction or plea to a domestic violence related crime or a Final Protective Order.



If you do not want to participate in mediation because you are a victim of domestic abuse but you do NOT have a restraining order

You may be eligible for a domestic violence restraining order if you have been physically abused or threatened by your ex-partner. You can contact your local crisis center for information and support in this process.

If you do not have a domestic violence restraining order but you have been a victim of domestic abuse or are afraid of your ex-partner, you should consider informing the court as soon as possible. You can request a separate First Appearance and other security measures.

If you let the court know that you are a victim of psychological or emotional abuse, the court may not order you to participate in mediation. The law (RSA 461-A:7, IV., (e)) says that the court may choose not to order mediation if there is "an allegation of serious psychological or emotional abuse."

Other reasons the court may choose not to order mediation:

- ✎ A showing of undue hardship to you (financial or scheduling problems)
- ✎ An accusation against you or your ex-partner of abusing or neglecting your child
- ✎ A finding of alcoholism or drug abuse, unless you agree to mediation
- ✎ A mediator is not found within a reasonable time



If you are considering participating in mediation and are a victim of domestic violence:

Consider the following:

- ✎ Whether you will feel safe in the mediation sessions. It is important to remember you know your ex-partner best and should listen to your gut if the situation doesn't feel safe.
- ✎ The ending of a relationship or making final legal arrangements can make the abuse worse.
- ✎ You may have to see your former partner more because of mediation visits.
- ✎ Mediators are not required to provide a safe environment. There may not be any security present in the location where the mediation session takes place. Unless you have a Final Domestic Violence Order mediation does not have to take place in a courthouse. Even if you don't have a final domestic violence order you can request that the mediation take place in a courthouse.
- ✎ Whether you will be able to speak for your needs and your children's needs if your ex-partner is present



If your case does not go to mediation

If you and the court or you and the mediator agree that your case is not appropriate for mediation, or if you cannot reach an agreement in mediation, the court will schedule a "temporary hearing" and the rest of your case will proceed in court.

If you decide to participate in mediation or are ordered to do so

- Ask your mediator about being in different rooms or having separate visits with the mediator. This is sometimes called “shuttling” or “caucusing”.
- Remember the mediator is not supposed to take sides and must keep anything you or your ex-partner says confidential when you are not in the same room together.
- Going to mediation does not mean you are required to agree on the issues in your case only that you will try to agree.
- You may choose to mediate only some of the issues in your case.
- The mediator may not make decisions for you.
- **You do not have to agree to anything in mediation.**

You can ask your local crisis center or the court for a referral to a mediator who is used to dealing with relationships where there is a history of domestic violence. If the court does not know whether a mediator knows how to handle domestic violence relationships, you may be able to say that there is a “lack of an available, suitable mediator” which is one of the reasons the law gives for the court to allow you to not use mediation.



Selecting a mediator

To find a mediator that can meet your needs you may ask a mediator these questions:

- Have you ever dealt with a domestic violence case before?
- How long have you been certified and what training have you had in domestic violence?
- Do you adhere to best practice for mediators?
- What safety measures do you have in place?
- How will you deal with the past violence and power imbalances in my former relationship?

If the mediator does not ask you if there domestic violence involved in your relationship consider finding a different mediator.

Before the first mediation session

Consider your needs carefully before going to the mediation visits. If possible learn the law related to divorce and parental rights and responsibilities (formerly custody.) Figure out what you need to make sure that you and your children can live safely and independently. A crisis center advocate may be able to help you with information and options, including finding legal help.



Consider talking to the mediator about the following:

- Let the mediator know about the abuse in your relationship
- If you feel afraid or intimidated by your former partner, be sure that the mediator understands that fear. Ask the mediator to help you make plans for your safe entry to and exit from mediation.
- Will the mediator work with you on safety planning for your session? If so you may work with a crisis center advocate on creating a safety plan during the session (eg. tapping a pen or using a code word to let the mediator know it is time to end the session because you are concerned for your safety or the safety of your children.)

You do not need to continue with mediation if you feel you cannot express your needs or if you feel unsafe – At any time you can tell the mediator that you feel that you can no longer attend mediation sessions safely and would like to stop the mediation. This may be done in private without your ex-partner present.

Do not fail to show up for mediation – You must call your mediator before your session if you feel it is unsafe to attend the mediation session. If you do not contact your mediator to let him or her know that you will not be there you will be charged for the session.

What to know before signing an agreement in mediation – If you reach an agreement you may want an attorney to review the agreement or at least review it yourself away from the mediation session and your former partner. Your local crisis center or the New Hampshire Bar Association may be able to help you find an attorney at no or reduced cost, depending on your current financial situation.



Handling Grievances Against Mediators

In NH, the courts contract with marital mediators who are certified under RSA 328-C: 2. For details about this law, you can log onto www.nh.gov/Marital/Rules.htm or call the NH Marital Mediation Certification Board (Board) at (603) 271-6593.

The Board is responsible for certifying mediators and handling complaints against them.

You don't have to be certified in the state of NH to practice mediation. Many experienced attorneys offer excellent mediation services. However, the Board has no authority to make sure that the mediator is providing quality services unless the mediator is certified in NH. You can select any mediator you wish, but the NH Court system will only assign your case to a Certified Marital Mediator.

All Marital Mediators that the court will refer you to will follow the "**Model Standards of Practice for Family and Divorce Mediation**" ("Model Standards"). These standards are a guide for mediators on how to behave and tell you what to expect in your mediator sessions. Standard X is the section that addresses Domestic Violence issues. If you need more information on these Model Standards you may contact a crisis center advocate.

You can also find these Standards at the website listed above, or log onto www.afcc.net.org, or call (608) 664-3750.

If you feel that a certified marital mediator is not following any part of the Model Standards, or if you feel like you have been mistreated by the mediation process, please contact the Board.

You will be asked to put your concerns in writing, The Board makes sure that mediation clients are treated fairly. If you would like help with this process contact your local crisis center advocate.

In addition, if you have a concern with a mediator that the court appointed you may fill out a confidential Mediator Evaluation Form located at the court or contact Karen Borgstrom, Esq, Director of the Office of Mediation and Arbitration at (603)-271-2521 Ext. 2371.

Please remember that no matter how skilled a mediator is, the process of mediation is not a substitute for independent legal advice, counseling, or therapy.



Help is available.

The 14 member programs of the New Hampshire Coalition Against Domestic and Sexual Violence assist survivors of sexual assault, domestic violence, and stalking, and members of their families, with 24-hour crisis lines, emergency shelter, counseling, support groups, and help dealing with police, medical and court personnel. We do not discriminate based on gender, age, health status (including – HIV positive), physical, mental, or emotional ability, sexual orientation, gender identity/expression, socio-economic status, race, national origin, immigration status, or religious or political affiliation. The member programs also provide speakers and educational programs to community groups.

This brochure was made possible by support from the New Hampshire Bar Foundation, Stanley M. and Thalia M. Brown and the Judge Richard E. Cooper Fund. Funding was also provided in part by the U.S. Department of Health and Human Services.

RESPONSE to Sexual & Domestic Violence
(1-866-644-3574)

Berlin, Colebrook, Lancaster

The Support Center at Burch House
(1-800-774-0544)

Littleton

Starting Point (1-800-336-3795)

Conway, Ossipee

Voices Against Violence (603-536-1659)

Plymouth

WISE (Women's Information Service)

(1-866-348-9473)

Lebanon

New Beginnings: A Women's Crisis Center

(1-866-644-3574)

Laconia and all of Belknap County

Turning Points Network (1-800-639-3130)

Claremont, Newport

Sexual Harassment and Rape Prevention Program

(SHARPP) University of New Hampshire

(1-888-271-7233)

Durham

Rape and Domestic Violence Crisis Center

(1-866-644-3574)

Concord

A Safe Place (1-800-854-3552)

Portsmouth, Rochester, Salem

Sexual Assault Support Services (1-888-747-7070)

Portsmouth, Rochester

YWCA Crisis Service (603-668-2299)

Manchester, Derry

Monadnock Center for Violence Prevention

(1-888-511-6287)

Keene, Jaffrey, Peterborough

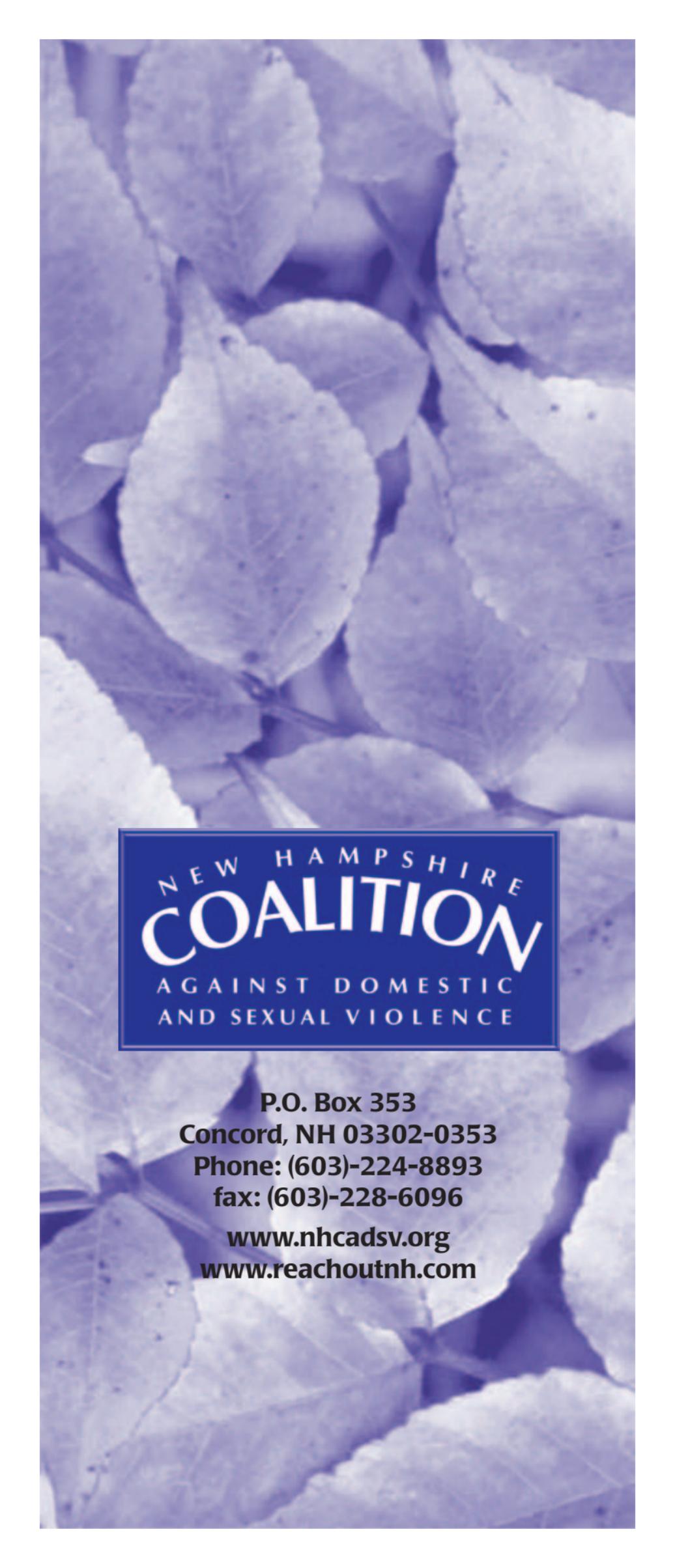
Bridges: Domestic & Sexual Violence Support

(603-883-3044)

Nashua, Milford

**For 24-hour assistance in New Hampshire,
call the toll-free domestic violence hotline at
1-866-644-3574**

*TTY & Language Line interpretation available



NEW HAMPSHIRE
COALITION
AGAINST DOMESTIC
AND SEXUAL VIOLENCE

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